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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 PEOPLE OF THE STATE OF NEW
4 YORK,

5 Plaintiff,

6 v.

23 Civ. 3773 (AKH)

7 DONALD J. TRUMP,

Hearing

8 Defendant.

9 -----x

10 New York, N.Y.
11 June 27, 2023
12 2:30 p.m.

13 Before:

14 HON. ALVIN K. HELLERSTEIN,

15 District Judge

16 APPEARANCES

17 NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE

18 Attorneys for Plaintiff

19 BY: MATTHEW COLANGELO

20 STEVEN WU

21 REBECCA MANGOLD

22 SUSAN D. HOFFINGER

23 BLANCHE LAW

24 Attorneys for Defendant

25 BY: TODD BLANCHE

NECHELES LAW LLP

Attorneys for Defendant

BY: SUSAN NECHELES

GEDALIA STERN

YUROWITZ LAW PLLC

Attorneys for Defendant

BY: STEVEN YUROWITZ

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(Case called)

THE DEPUTY CLERK: Counsel, please state your appearances for the record.

MR. COLANGELO: Good afternoon, your Honor. Matthew Colangelo for the People of the State of New York.

THE COURT: Let me make some rules here. When you speak, take your mask down or off.

MR. COLANGELO: Yes, your Honor.

Matthew Colangelo for the People.

MR. WU: Steven Wu for the People.

MS. MANGOLD: Becky Mangold for the People.

MR. BLANCHE: Good afternoon, your Honor. Todd Blanche for President Trump.

MS. NECHELES: Good afternoon, your Honor. Susan Necheles for President Trump.

MR. STERN: Good afternoon, your Honor. Gedalia Stern for President Trump.

THE COURT: I am pleased to see you all. I want to congratulate you all on the high quality of your briefing, which made life a lot easier for my law clerks and for me. I also want to mention that, although she's not here today, Susan Hoffinger, who was a part of the law team for the People, her late parents and my wife and I were very close friends for a very long time. I also know Todd Blanche very fondly from his time in the US Attorney's Office. Neither acquaintance will

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1 make any difference to me, I am not biased and I don't think
2 there's an appearance of bias. If anyone objects, they can
3 make a statement and impose it on the record.

4 I thought to begin the case, since there is a core of
5 information, that it might be a good idea for me to make a
6 rather long opening statement that would recite where we are,
7 and then we'll begin.

8 So defendant, Donald Trump, previously President of
9 the United States, removed his criminal case from the New York
10 Supreme Court to the United States District Court of the
11 Southern District of New York. The People of the State of New
12 York moved to remand. The question to be decided -- and upon
13 which I will write -- is whether the governing statute, 28,
14 USC, Section 1442(a) authorizes such removal.

15 Section 1442(a) allows officers of the United States
16 to remove a civil or a criminal case brought against them in a
17 state court if the case is for or related to any act performed
18 by or for them under color of their office, any act for or
19 relating to any act performed by or for them under color of
20 their office. There also is a requirement that the defense
21 that is relied on is based on federal law.

22 On April 4, 2023, a grand jury in the Supreme Court of
23 New York County charged defendant with 34 counts of falsifying
24 business records in the first degree in violation of New York
25 Penal Law Section 175.10. The indictment alleges that the

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1 crimes took place between February and December 2017. They
2 could be categorized into three types of business
3 falsifications: Those involving business records and a form of
4 invoices take up 11 counts; those in the form of general ledger
5 falsifications take up 12 counts; and those in the form of
6 checks and check stubs take up 12 counts. All 34 counts allege
7 that defendant made and caused false entries in the business
8 records of the Trump businesses with attempt to defraud and
9 with intent to commit another crime and aid and conceal the
10 commission of such other crime.

11 The indictment is embellished by a statement of facts
12 found in the records of the Supreme Court and removed to this
13 court. The People allege in that statement that defendant,
14 Donald Trump, is a beneficial owner of the Trump Organization,
15 a collection of business entities headquartered in New York
16 County. The defendant had announced his candidacy for
17 President of the United States in June 2015. Then in August
18 2015, two months later, defendant met with Michael Cohen, a
19 lawyer, who had been employed as special counsel to defendant
20 Trump and to the Trump Organization, that there was a meeting
21 between Cohen and the Chief Executive Officer of American Media
22 Inc. and the defendant and that the three agreed to a scheme to
23 suppress negative stories about defendant. Specifically, the
24 Chief Executive Officer of a company called American Media Inc.
25 agreed to suppress negative stories and to alert Cohen before

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1 they were published.

2 In October 2016, American Media became aware of a
3 story regarding a woman named Stephanie Clifford, also known as
4 Stormy Daniels, an adult film actress, who claimed that she had
5 a sexual encounter with defendant while he was married. The
6 Editor in Chief of American Media contacted Cohen and Cohen and
7 Clifford's lawyer agreed to pay Clifford \$130,000 in exchange
8 for her rights to her story. The statement goes on to allege
9 that Cohen discussed the agreement with Donald Trump and with
10 the Chief Financial Officer of the Trump Organization.
11 Defendant Trump stated that he did not want to make the
12 payments himself. After discussion between Cohen and the Chief
13 Financial Officer of the Trump Organizations, Cohen agreed to
14 advance the payment with the understanding that he would be
15 reimbursed.

16 Following a conversation between Cohen and defendant
17 Trump on October 26th, 2017, Cohen opened a bank account in
18 Manhattan in the name of a dummy company he created called
19 Essential Consultants LLC. Cohen deposited \$131,000 taken from
20 his personal home equity line of credit in October 2017, wired
21 \$130,000 from the account to Clifford's lawyer.

22 The statement goes on, in January 2017, defendant met
23 with Cohen and the Chief Financial Officer to discuss how Cohen
24 would be reimbursed for his payment to Clifford. They agreed
25 to a payment of \$420,000 to Cohen made up to include \$180,000

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1 to reimburse Cohen for the \$130,000 payment he had made to
2 Clifford and for another \$50,000 expense, then to double that
3 amount, equal to \$360,000 so that Cohen could characterize that
4 payment on his income taxes as income, rather than as
5 reimbursement for expenses.

6 So he was given that \$360,000. He was promised to be
7 given that \$360,000, plus another \$60,000 as a year-end bonus
8 for his services. Trump was to pay Cohen by 12 monthly
9 installments of \$35,000 each, the equal of \$420,000.

10 Each month, Cohen was to send an invoice to Trump
11 through the Trump Organization requesting payment of \$35,000
12 for legal services rendered in that month pursuant to a
13 retainer agreement. The statement alleges that, in fact, no
14 retainer agreement between Cohen and Trump existed or between
15 Cohen and the Trump Organization existed.

16 On February 14th, 2017 -- and to remind us, Donald
17 Trump began office as president in January 2017 -- on
18 February 14th, 2017, Cohen emailed his first invoice to the
19 controller of the Trump Organization requesting \$35,000 for
20 January and \$35,000 for February as his retainer. Cohen's
21 statement said, pursuant to the retainer agreement, kindly
22 remit payment for services rendered for the months of January
23 and February 2017. The Chief Financial Officer approved the
24 payment. The controller sent the invoice to the Trump
25 Organization accounts payable supervisor with the instruction

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1 to post to legal expenses, put retainer for the months of
2 January and February 2017 in the description.

3 Cohen submitted ten similar invoices to the Trump
4 Organization for each month of 2017 stating that it was being
5 submitted pursuant to the retainer agreement and requesting
6 payment for services rendered that month.

7 According to the statement, the Trump Organization
8 marked each invoice with a general ledger code representing
9 legal expenses, kept the invoices and business records of
10 expenses paid and recorded the payments in its electronic
11 accounting system, describing each payment as legal expense.
12 The accounts payable supervisor of the Trump Organization
13 prepared the check and check stub for approval.

14 The first two checks were paid by the Donald J. Trump
15 Irrevocable Trust, signed by two trustees. That trust had been
16 created to hold all of Trump's private assets while he was
17 president. The check stubs recorded the payments as retainer
18 payments. Defendant Donald Trump signed the remaining checks
19 himself, drawn on his own bank account. The signed checks and
20 the check stubs were sent from Trump to New York, back to the
21 Trump Organization, where they were scanned, recorded and
22 mailed to Cohen as payments, and thereafter maintained as
23 business records.

24 In August 2018, Cohen pleaded guilty to a felony in
25 connection with his role in American Media's payments. He

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1 stated, on or about October 2016, in coordination with and at
2 the direction of the candidate for federal office, Donald
3 Trump, I arranged to make a payment to a second individual with
4 information that will be harmful to the candidate and to the
5 campaign to keep the individual from disclosing the
6 information. To accomplish this, I used a company that was
7 under my control to make a payment in the sum of \$130,000. The
8 monies I advanced in my company were later repaid to me by the
9 candidate. I participated in this conduct, which in part took
10 place in Manhattan, for the principal purpose of influencing
11 the election.

12 On May 4, 2023, defendant Donald Trump removed the
13 case to federal court on the basis of the Federal Officer
14 Removal Statute, 28, USC, Section 1442(a)(1) which I summarized
15 before. In the notice of removal, defendant maintains that the
16 federal court has subject matter jurisdiction over the case
17 because the indictment, quote, "Charges President Trump for
18 conduct committed while he was President of the United States
19 that was within the color of his office and the charges
20 involved allege federal and state election law violations that
21 have a federal preemption defense."

22 Specifically, the notice of removal of asserts that
23 the charged conduct relates to acts performed under the color
24 of office within the meaning of Section 1442 because Cohen was
25 hired as defendant's personal lawyer. As a direct result of

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1 President Trump's role as President of the United States and
2 his obligations under the Constitution and in order to separate
3 his business affairs from his public duties. Defendant Trump
4 additionally contends that election-related acts relate to acts
5 performed under color of office because they relate to
6 defendant's position as president.

7 Paragraph 19 of the notice of removal states the
8 federal grounds for removal. It asserts that, shortly before
9 assuming the office of the presidency and in order to assure
10 the American public that he had separated his personal business
11 from his public duties, as well as to fulfill various
12 constitutional obligations; for example, the foreign Emoluments
13 Clause, Article I, Section 9, Clause 8, which states, in
14 effect, that the compensation of the president shall be fixed
15 and not vary up or down and prevents emoluments from any United
16 States or any other states within the United States in addition
17 to the compensation.

18 The notice also cites the Take Care Clause, Article
19 II, Section 3, which, in effect, requires the president to
20 execute the laws, to take care to execute the laws of the
21 United States.

22 The notice goes on to allege that defendant placed his
23 businesses in a trust and, quote, hired a personal lawyer,
24 Michael Cohen, to handle his personal affairs, close quote.
25 The notice alleges that these steps were taken by the president

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1 solely because he was President of the United States. The
2 notice contends that President Trump's decision to retain
3 Michael Cohen to act as his personal lawyer arose out of his
4 duties as president and therefore gives rise to a federal
5 defense.

6 As a second purported federal defense, Trump asserts
7 that he intends to argue that the indictment's felony charges
8 are predicated on state and federal election laws that are
9 preempted by the Federal Election Campaign Act.

10 Finally, the notice of removal contends that the
11 district court, this district court has protective jurisdiction
12 over the action because the indictment is politically motivated
13 and was brought because a local politician disfavored President
14 Trump's acts and policies as President of the United States and
15 presumably caused this indictment to issue.

16 On May 30, 2023, the People filed the instant motion
17 to remand this case to the state court. I hold oral argument
18 on this matter today.

19 There are essentially three issues: One is whether
20 the president is an officer of the United States entitled to
21 remove the case; second is whether the criminal case against
22 him is for or relating to any act under color of his office,
23 for or relating to any act under color of his office; and third
24 is whether he has a federal defense.

25 With that, I will stop and ask Mr. Colangelo to argue

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1 in favor of his motion to remand.

2 MR. COLANGELO: Thank you, your Honor. Matthew
3 Colangelo for the People.

4 One of the clearest examples of traditional state
5 authority in our constitutional system is the punishment of
6 local criminal conduct. And for that reason, the Supreme Court
7 emphasized 90 years ago that the federal officer removal
8 provision is an exceptional procedure that should be applied
9 consistent with a strong judicial policy against federal
10 interference in state criminal prosecutions. The Court should
11 conclude that the defendant has not established by a
12 preponderance of the evidence the facts necessary to show
13 subject matter jurisdiction here for two key reasons:

14 First, he has not shown facts that demonstrate that
15 the conduct for which he's charged in the People's indictment
16 is for or relating to any act under color of his former office
17 as president. And most critically, no party disagrees that the
18 payments at issue here were personal payments from personal
19 accounts to a personal attorney handling the defendant's
20 personal affairs. That agreed set of facts alone answers the
21 question in the negative, the defendant was not being charged
22 with any conduct for or relating to any under color of his
23 office.

24 Just as fatal, defendant cannot establish a colorable
25 federal defense. He can't establish Supremacy Clause immunity

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1 because, among other reasons, that ground of immunity requires
2 that he show a duty. Not only has the defendant not
3 established a duty to separate his official from his unofficial
4 conduct here, your Honor, he expressly disclaims any duty of
5 the kind in the evidence that he's presented to the Court. The
6 second sentence of the Morgan Lewis white paper itself says,
7 "He has no federal, statutory or constitutional obligation."

8 THE COURT: That's not in evidence, is it?

9 MR. COLANGELO: Well, it can certainly be admitted
10 into evidence, your Honor, as a statement of the opposing
11 party.

12 THE COURT: As a statement of admission?

13 MR. COLANGELO: Yes, your Honor, and under
14 801(d)(2)(A).

15 THE COURT: A document prepared for him by a lawyer to
16 the effect that he is not an officer of the United States is an
17 admission against interest?

18 MR. COLANGELO: Well, the document is he has no duty
19 under the Constitution or federal law. And yes, that assertion
20 can be admitted against him either as a statement by him or by
21 his attorney --

22 THE COURT: A lawyer writes a statement to a client,
23 that is not necessarily an adopted statement by the client.

24 MR. COLANGELO: Depending on the circumstances, your
25 Honor, it can be. But I will also bring to your attention an

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1 exhibit that we alerted the defendant to yesterday, if I may.

2 THE COURT: That's the brief?

3 MR. COLANGELO: No, your Honor.

4 As the Court is aware -- and I can hand this up if the
5 Court likes.

6 THE COURT: I have it. I read your papers,
7 Mr. Colangelo.

8 MR. COLANGELO: A document we have not filed, your
9 Honor. I apologize.

10 THE COURT: What is the document?

11 MR. COLANGELO: This is a transcript of the president
12 elect's press conference in January of 2017.

13 THE COURT: I don't have that.

14 MR. COLANGELO: Correct, your Honor.

15 We exchanged it with defense counsel yesterday and did
16 not file it. I can hand it up, if the Court likes.

17 THE COURT: Which reminds me, how are we going to put
18 all these stipulated facts into the record? Are you going to
19 read them into the record?

20 MR. COLANGELO: Yes, your Honor. I'm happy to put
21 facts into the record.

22 THE COURT: When would it be opportune to do that?

23 MR. COLANGELO: At any point the Court prefers, your
24 Honor. It may make sense as --

25 THE COURT: Why don't you do 26, and then we'll go and

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1 talk about how to make that record here.

2 MR. COLANGELO: Thank you, your Honor.

3 THE COURT: The statute for how to proceed requires
4 this to be an evidentiary hearing, under the terms in the
5 statute. So we'll need, in some fashion, to take evidentiary
6 facts. Those evidentiary facts relate to a legal question,
7 whether this court has jurisdiction or not.

8 MR. COLANGELO: Yes, your Honor. And that's the
9 reason the parties stipulated last week to the admissibility of
10 the documents that we identified in the joint letter.

11 The exhibit I just handed up, your Honor, which the
12 People have identified as Exhibit 26 is a transcript of the
13 president elect's press conference on January 11th, 2017 when
14 he published the Morgan Lewis white paper the defendant has
15 filed in these proceedings. And if the Court turns to page 10
16 of the document I handed up, this is a quote from the president
17 saying that he turned down a business deal because, quote, "As
18 you know, I have a no conflict situation because I'm
19 president." Then in the next paragraph he says, "I have a no
20 conflict of interest provision as president" later in the
21 paragraph, so I could actually run my business, I could
22 actually run my business and run government at the same time.
23 I don't like the way that looks, but I would be able to do that
24 if I wanted to. I would be the only one to be able to do that.

25 So both in the Morgan Lewis white paper and in this

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1 press conference, he disclaims, the defendant himself has
2 disclaimed any federal duty.

3 THE COURT: I don't follow that as relating to the
4 question of 1442(a), is the president an officer entitled to
5 remove. I don't see the relevance here.

6 MR. COLANGELO: Your Honor, this goes to the color of
7 office question.

8 So in order to satisfy the removal standard, the
9 defendant has to show that the crimes he's charged with
10 committing were for or relating to any act under color of his
11 office. Now, he has said that he separated his personal from
12 his official affairs because he had a duty to do so. The point
13 I'm making is simply that he disclaimed having any such duty.
14 So his conduct can't be related to his official acts if his
15 view was that he didn't have any obligation to do it.

16 But, your Honor, I think more directly, even on the
17 facts that the parties agree -- that Mr. Cohen was paid from
18 personal accounts as a personal attorney handling his personal
19 affairs -- that agreement, those agreed facts alone demonstrate
20 that the conduct that Mr. Trump was charged with here is not
21 conduct that relates in any way --

22 THE COURT: Mr. Colangelo, it's going to be very
23 confusing to run those three arguments together. Let's take
24 one at a time. Let's take the argument, and then maybe I'll
25 have Mr. Blanche state his opposition, and then we'll go back

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1 to you again on the second point.

2 So the question is: Is the president an officer
3 entitled to the benefit of the statute?

4 MR. COLANGELO: Yes, your Honor, happy --

5 THE COURT: And the argument is, I'm elected,
6 therefore I'm not an officer, that's your argument; right?

7 MR. COLANGELO: Correct. The argument is that that
8 particular question, whether the president can be an officer is
9 a difficult question that has not been squarely resolved by any
10 court, that the defendant has himself taken both sides in
11 answering, including in the Morgan Lewis white paper. And the
12 People's argument is the Court does not have to reach that
13 issue, because there are other grounds for removal here that
14 would be dispositive.

15 THE COURT: So you prefer not to continue arguing on
16 the first issue, whether the president is an officer entitled
17 to removal?

18 MR. COLANGELO: Well, your Honor, our argument is that
19 the Court doesn't need to reach the question. If the Court
20 does reach the question, the answer is that, where there's a
21 traditional constitutional understanding, that executive branch
22 officers are not considered officers if they're elected, that
23 absent some contrary indications in the statute, he should not
24 be considered an officer here. That's our argument.

25 THE COURT: Let's say that a widow of a soldier sent

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1 into battle by the president dies and the widow claims against
2 the president on the grounds that he was sent into battle
3 without authority -- willfully, maliciously, in all other ways
4 that people express themselves in a tort action -- that would
5 have to be removal, wouldn't it?

6 MR. COLANGELO: Your Honor, the answer to that
7 question is yes. But a tort action against the president would
8 proceed under the Westfall Act. And under the Second Circuit's
9 controlling opinion in Carroll v. Trump, the president is an
10 employee of the government. As we explained in our opening
11 brief --

12 THE COURT: But it would have to be removed in the
13 first instance. It may be subsequently covered by the Westfall
14 Act, that is that the state itself, government itself would
15 have to be answerable for the tort, but the removal could be by
16 the president, if the president were sued, I would think. No
17 case has said this.

18 So maybe we cut this short, because I think your point
19 that I don't have to make a ruling on this issue is a good
20 point and it may not be necessary for the decision here.

21 Mr. Blanche points out in his paper that there's a
22 long line of cases where Congressmen, who are also elected,
23 have removed under the statute without any real objection to
24 it. And the hypothetical I posed would suggest that the
25 president himself would have an ability to remove. So that

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1 would suggest, without my holding, that the president should be
2 considered, for the purpose of this statute, an officer. But I
3 agree with you, I don't need to hold this point, it's a moot
4 point, it's not necessary to the decision.

5 Unless Mr. Blanche would like to say anything more on
6 this point, we can pass to the next point.

7 MR. BLANCHE: Your Honor, we agree with the Court that
8 under 1442 and the cases that have addressed this issue, the
9 idea that an elected official does not come under the statute
10 is inconsistent with the law. There's examples of Congress
11 removing under 1442(a), and the fact that this type of case has
12 never presented itself shouldn't be surprising, given why we're
13 here today, given that the law, what we have asked your Honor
14 to find, that the president does qualify as an officer. It
15 would be inconsistent with the statute for every federal
16 official to qualify, for every elected official in the United
17 States to qualify, but aw-shucks, the president doesn't.
18 There's no sense, there's no way that --

19 THE COURT: I'm inclined to agree with the point, but
20 I don't think it's necessary to decide in this case.

21 Thank you, Mr. Blanche.

22 Now, go on the next point, Mr. Colangelo.

23 MR. COLANGELO: Thank you, your Honor.

24 The second requirement of the test that your Honor
25 identified is the color of office obligation, that the conduct

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1 charged in the People's indictment has to be for or relating to
2 any act under color of the defendant's office. I think there
3 are two key premises that nobody disagrees with that set the
4 parameters for these discussions. The first is that the
5 Supreme Court made clear in Nixon v. Fitzgerald and in Clinton
6 v. Jones that the president's duties are not all-encompassing.
7 There is an outer perimeter to his official function. No
8 disagreement about that, I don't believe.

9 The Supreme Court also made clear in Trump v. Mazars
10 and Trump v. Vance, that not only can the president have
11 personal cases, but that the business records of the very
12 entities involved in this prosecution are themselves the
13 president's personal papers and the president, as we point out
14 in our brief, brought those in his personal capacity.

15 So we know there's an outer perimeter to the
16 president's conduct, we know the president can -- even while
17 he's president -- have personal papers that are not subject to
18 any executive privilege or other official protection. Based on
19 those two principles, your Honor, and the agreed fact that
20 these payments were personal payments from personal accounts to
21 a personal lawyer handling personal affairs, it simply doesn't
22 make sense that those payments are for or relating to any act
23 under the color of the former president's office.

24 The only argument, I believe, the defense makes that
25 they are is that the president only separated his personal from

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1 his official conduct because he was about to become president.
2 As I mentioned, we disagree with that fact. We don't believe
3 that the defense has supported it with any admissible evidence
4 here. But the Court doesn't need to decide in order to remand
5 for two reasons:

6 First, any duty the defendant had to take the initial
7 step of separating his personal affairs from his official
8 functions, any duty would terminate once he had taken that
9 step. And it wouldn't make sense to conclude that subsequent
10 conduct further down the line, after he had accomplished that
11 divorce, were also official.

12 THE COURT: I need to follow this better.

13 You are saying that the divestment that took place,
14 the divestment of his assets, his personal assets took place
15 before he became president; is that what you are saying?

16 MR. COLANGELO: Correct, your Honor.

17 THE COURT: So it was an accomplished fact?

18 MR. COLANGELO: Correct, your Honor.

19 And once he accomplished that fact --

20 THE COURT: But the falsifications took place when he
21 was president.

22 MR. COLANGELO: That's true, your Honor. But he was
23 not performing an official function.

24 If you were willing to agree -- and again, the People
25 don't --

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1 THE COURT: What does the divestment have to do with
2 this issue?

3 MR. COLANGELO: Your Honor, the point is that, even if
4 it is correct that making a decision to separate personal from
5 official is somehow related to his duties, that further
6 personal steps he takes down the road can be related to his
7 official duties, that would defeat the purpose. He
8 intentionally separated official from unofficial. So by
9 definition, writing personal checks, even if he did it in the
10 oval office, is not an official act.

11 The second argument the defense makes, your Honor, is
12 that the payments to Mr. Cohen were in fact legal
13 reimbursements. But again -- obviously, the Court read the
14 allegations in the People's indictment statement of facts,
15 obviously, the People don't concede that point -- but even if
16 true, that would go only to a defense of the state charges. It
17 wouldn't show that this was official conduct.

18 And I think the Court can see how these points compel
19 the conclusion that his conduct was not official by looking at
20 a couple of cases the People cited. The first is matter of
21 Donovan, the prosecution of the former labor secretary, where
22 this court held that because the conduct of Secretary Donovan
23 occurred before he became labor secretary, it didn't relate to
24 his official conduct, he didn't have any color of office
25 grounds for removal. The second case the People cite is a case

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1 called Ohio v. Meade, which is a case where a deputy sheriff in
2 Ohio was also cross-designated as a deputy US Marshal on a
3 fugitive task force. And returning from his duties on task
4 force deployment, he encountered an individual who was
5 ultimately charged with murder under state law as a result of
6 that encounter. And the Southern District of Ohio said that
7 during the encounter, even though he had a separate role as a
8 federal officer, he was acting in his state role.

9 So it's possible to act in one of two roles. And the
10 facts here show that the defendant --

11 THE COURT: It's a perimeter -- you are making the
12 same point, that there's a part of the duties that were
13 official -- and I wouldn't say duties -- that there were
14 official duties and that there were activities, even if a
15 person is in a federal office, that are private.

16 So even though you become a federal official, even if
17 I become a judge, I can still take care of personal matters
18 inside myself; I can write checks for my milk deliveries, I can
19 buy groceries, all those are private acts.

20 MR. COLANGELO: That's exactly right, your Honor.
21 Even if you write checks for your milk deliveries --

22 THE COURT: I can defame somebody.

23 MR. COLANGELO: Pardon me.

24 THE COURT: I can defame somebody, I can slander and
25 defame someone for something that happened before?

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1 MR. COLANGELO: Yes.

2 THE COURT: And it would not be a public event, it
3 would be a private one?

4 MR. COLANGELO: Yes. The Court is capable of taking
5 private acts. The president is as well.

6 THE COURT: That was the case in Carroll?

7 MR. COLANGELO: Yes, it was.

8 And your Honor, one critical point here is to accept
9 defendant's arguments is to ignore a central through line in
10 every case that violates the color of office standard for
11 federal --

12 THE COURT: Let me see if I can shorten the argument.

13 Mr. Blanche is arguing that the language of "for or
14 related to" as a preamble to the color of office clause was an
15 amendment in 2011 that broadened the statute and makes academic
16 a number of the cases, if not all the cases, that you cite.
17 And jumping on that, he argues that the president's concern to
18 execute the laws that prevent him from taking emoluments
19 authorize him to hire a private lawyer to sanitize his affairs
20 so that he doesn't breach the constitutional provision. I
21 think that's his argument.

22 Would you comment on it.

23 MR. COLANGELO: Yes, your Honor.

24 Assuming it's correct that that was the defendant's
25 intent in hiring a personal lawyer, to sanitize his affairs in

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1 order not to breach any constitutional obligations, I think
2 that the response to that is the response I gave a minute ago,
3 which is, once he has accomplished that separation, the private
4 conduct that he engages in afterwards can't be considered
5 official because there would have been no reason to make the
6 separation. And otherwise, your Honor, the --

7 THE COURT: I don't get that. I can understand that
8 it continues to be private. But Mr. Blanche is saying the
9 private act relates to the public proscription, that because of
10 the constitutional proscription I hired a private lawyer to
11 sanitize my life -- that's the argument -- there are no facts
12 to base this on, but that's the argument.

13 MR. COLANGELO: Yes. So let me give you two
14 responses, your Honor.

15 First, if you accepted that argument, it would require
16 contravening the principle articulated in every Supreme Court
17 case that addresses this question, I believe, which is that
18 there is a difference between a defendant's identity as a
19 federal actor and his duty or his obligations as that federal
20 actor. Whatever else the Supreme Court has said, it has said
21 that an individual's identity as a federal actor alone is not
22 enough. And we know that there isn't a president's only rule,
23 because Clinton v. Jones made clear that it categorially
24 rejected the granting of any immunity in President Clinton's
25 identity as president. So although I believe --

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1 THE COURT: President Clinton wanted immunity for
2 something he had done before he became president and not
3 because of anything he had done while he was president.

4 Mr. Trump wants to say that he hired Mr. Cohen because
5 he was worried about the proscriptions of the Constitution. So
6 he says that the private act of hiring Cohen and paying him out
7 of my pocket and taking care of something personal to me
8 relates to a proscription of the Constitution. I think that's
9 the argument. It sounds a little far-fetched, but that seems
10 to be the argument.

11 MR. COLANGELO: So, your Honor, let me answer a couple
12 of those questions.

13 The Court is, of course, correct that President
14 Clinton was sued for conduct, or at least the Court considered
15 the aspects of the suit that related to conduct before he
16 became president, but his claim --

17 THE COURT: President Clinton said, I can't be
18 bothered taking care of this lawsuit against me for something I
19 did before I became president because I'm too busy as
20 president.

21 MR. COLANGELO: Exactly.

22 THE COURT: And that was held, too bad, Mr. President,
23 you have to sit for a deposition.

24 MR. COLANGELO: That's exactly right. He was not
25 immune from civil process because the Supreme Court said, there

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1 is no immunity grounded solely in his identity as president.
2 And the defense's argument here would collapse the federal
3 officer color of office requirement in a way that would violate
4 that ruling of the Supreme Court, your Honor.

5 If the Court has no further questions, I'll move on.

6 THE COURT: No, let's have Mr. Blanche's view on this,
7 and then we'll take -- before you sit down, you have stipulated
8 to number of facts, and they should be on the record, it seems
9 to me, because the sense of those acts is to show that there is
10 substance behind the allegations and your statement of facts.
11 Since this is supposed to be an evidentiary hearing, I would be
12 taking those evidentiary facts as supporting the proposition
13 stated in your statement of facts. So let's do that now.

14 MR. COLANGELO: Thank you, your Honor.

15 The parties stipulated to the admissibility, for
16 purposes of this hearing, of People's Exhibits 3 through 12.
17 And without objection, based on that stipulation, I will move
18 them into evidence, your Honor.

19 THE COURT: Mr. Blanche, no objection?

20 MR. BLANCHE: No objection, your Honor.

21 THE COURT: Received.

22 (Plaintiff's Exhibits 3 - 12 received in evidence)

23 MR. COLANGELO: Thank you, your Honor.

24 One more note for the record, a number of those
25 exhibits were filed under seal; those are Exhibits 3, 8, 9, 10,

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11 and 12. We ask that they remain under seal, notwithstanding that they have been received into evidence.

THE COURT: Well, they are stipulated facts to allow their use, why don't you recite them.

MR. COLANGELO: I'm sorry, your Honor, give me one second to confer with defense counsel.

(Conferring)

THE COURT: There's one thing more, I would like as an example one of the checks that was signed by Mr. Trump to be an exhibit as part of the record, even though that's a grand jury record.

MR. COLANGELO: The people don't object, your Honor. And we're happy to confer with the defense, if they have a preference as to which check.

(Conferring)

MR. COLANGELO: I don't believe the parties have any objection to one of the checks being --

THE COURT: Why don't you read the stipulated items that could be introduced in evidence.

MR. COLANGELO: So, your Honor, I conferred with defense counsel. I don't believe the parties have stipulated to any facts. We have stipulated that the Court may admit those exhibits into evidence and consider them in the Court's ruling.

THE COURT: I have accepted them, but I want a public

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1 record. And you have agreed with Mr. Blanche that certain
2 aspects of these sealed exhibits can be made public and put on
3 the record, subject to my conversation with both of you
4 yesterday.

5 I need a public record, Mr. Colangelo. And you are
6 using matters that would otherwise be secret because they were
7 considered by a grand jury and maybe for other reasons as well.
8 But since this is a public hearing, I order that, to the extent
9 necessary to create a record here, that they be made public.

10 So go ahead and read what you are allowed to use these
11 for, and I will admit them for purposes of evidence.

12 MR. COLANGELO: Yes, your Honor.

13 Exhibit 3, the People proffer as evidence that there
14 was a private agreement -- pardon me, your Honor, let me confer
15 with defense counsel.

16 (Conferring)

17 MR. BLANCHE: Your Honor, the defense position is
18 that, to the extent that your Honor relies on exhibits that
19 have been admitted, even sealed exhibits, to the extent they
20 are part of your Honor's decision, they should not be sealed.

21 THE COURT: I agree. But we are unsealing only to the
22 extent that they can be used. There may be other things in
23 those exhibits that I don't need as part of this record, and
24 I'm not unsealing those.

25 MR. COLANGELO: Thank you, your Honor.

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1 And apologies if we misunderstood. My understanding
2 following the colloquy we had with you and Mr. Blanche
3 yesterday was, to the extent either party asked the Court to
4 rely on specific facts from the sealed exhibits, we would
5 identify them when referencing those facts in the course of the
6 argument.

7 THE COURT: No. You have Exhibit 3.

8 MR. COLANGELO: Yes, your Honor.

9 THE COURT: What of Exhibit 3 do you wish for me to
10 consider?

11 MR. COLANGELO: Thank you, your Honor.

12 For Exhibit 3, I would like you to consider that it's
13 a nondisclosure agreement that involved the payment of \$130,000
14 to Stephanie Clifford by Michael Cohen through Essential
15 Consultants.

16 THE COURT: Date?

17 MR. COLANGELO: One moment, your Honor. The agreement
18 is dated October 28th, 2016.

19 THE COURT: Anything else in this exhibit you want me
20 to consider?

21 MR. COLANGELO: No, your Honor.

22 THE COURT: Any objection, Mr. Blanche?

23 Does your microphone work?

24 MR. BLANCHE: My microphone is not working.

25 THE COURT: Can't that be made to work,

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1 Mr. Technician. It worked yesterday when we tested the room.

2 THE COURT: Use that mic, Mr. Blanche.

3 MR. BLANCHE: Your Honor, with respect to the exhibits
4 that are being offered by the People, these exhibits are sealed
5 because of the existing protective order in the state
6 proceeding. Most of these exhibits are already publicly
7 available because of congressional investigation. To the
8 extent that your Honor or the People have relied on them, they
9 of course should be part of the record.

10 THE COURT: I am not relying on anything other than
11 the record in this case. I am not relying on anything put
12 before Congress or anything written --

13 MR. BLANCHE: Agreed.

14 THE COURT: So that's why I want Mr. Colangelo to
15 state what he wants me to consider. And he's done that.

16 And the question to you is whether you have any
17 objection.

18 MR. BLANCHE: Yes, we agree with that, your Honor.

19 THE COURT: No objection. That's received.

20 MR. COLANGELO: Thank you, your Honor.

21 Exhibit 8, People's Exhibit 8 is a sealed exhibit. We
22 ask the Court to consider that this is a bank statement from
23 First Republic Bank for Essential Consultants LLC, the shell
24 corporation that Mr. Cohen established to accomplish the
25 payment to Ms. Clifford through her lawyer. We ask the Court

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1 to consider that it shows a transfer out of \$130,000. We also
2 ask the Court to consider the handwritten notes on the
3 left-hand side of the statement, which show the conversion of
4 that \$130,000 payment, combined with other obligations, to the
5 \$420,000 reimbursement amount that the People allege is the
6 basis of the falsified business records counts in this case.

7 THE COURT: Those were the calculations, as stated
8 before, in summarizing this page?

9 MR. COLANGELO: Yes, your Honor.

10 THE COURT: Mr. Blanche, objection?

11 MR. BLANCHE: We don't object to it being part of the
12 record, your Honor. As I'll address in a moment, we don't
13 agree --

14 THE COURT: The problem is that --

15 MR. BLANCHE: Sorry, your Honor.

16 We don't object to it being part of the record. As
17 I'll say in a moment, your Honor, we object the notes reflected
18 are accurate, but we don't object to that being part of the
19 record.

20 THE COURT: Mr. Colangelo is just reading the notes as
21 they appear on that document. It's not making any statement
22 about the notes, when they were written or why, just that those
23 notes appear.

24 MR. COLANGELO: Your Honor, Exhibit 9 filed under
25 seal, we ask the Court to consider only --

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1 THE COURT: Are we finished with 8?

2 MR. BLANCHE: Pardon me?

3 THE COURT: Anything else you want to bring out in 8?

4 MR. COLANGELO: No, your Honor. Nothing for the
5 People.

6 THE COURT: Mr. Blanche, anything else under 8?

7 MR. BLANCHE: No, your Honor.

8 THE COURT: I didn't ask you about 3. Anything about
9 3 you want to add?

10 MR. BLANCHE: No, your Honor.

11 THE COURT: Next, Mr. Colangelo.

12 MR. COLANGELO: Your Honor, for Exhibit 9, we only ask
13 the Court to consider that this exhibit reflects the 11
14 invoices that correspond to the 11 counts for falsifying
15 business records in the indictment that the Court described as
16 relating to invoices. I would ask that if the Court intends,
17 following this hearing, to unseal any of these exhibits, we
18 have an opportunity to review them for material that can't be
19 disclosed publicly.

20 THE COURT: No, I'm not intending to do that.

21 MR. COLANGELO: Thank you, your Honor.

22 THE COURT: Eleven invoices times 35,000 comes to
23 385,000?

24 MR. COLANGELO: That's correct, your Honor. One of
25 the invoices, the one submitted in February 2017, was for two

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1 months, and it was for \$70,000.

2 THE COURT: That would add up to 420, okay.

3 MR. COLANGELO: Your Honor, Exhibit 10 is a sealed
4 exhibit. The People ask the Court to consider only that this
5 exhibit contains the 12 general ledger entries that correspond
6 to falsifying business records that relate to false entries in
7 the general ledger.

8 THE COURT: Objection?

9 MR. BLANCHE: No objection.

10 THE COURT: Received.

11 MR. COLANGELO: Your Honor, Exhibit 11 is a sealed
12 exhibit. The People ask the Court to consider only that this
13 exhibit includes the 11 checks and check stubs that correspond
14 to the 11 counts in the indictment for falsifying business
15 records that relate to false entries in the check and check
16 stubs.

17 THE COURT: Objection, Mr. Blanche?

18 MR. BLANCHE: No objection.

19 THE COURT: Received.

20 MR. COLANGELO: Your Honor, Exhibit 12 is the final
21 sealed exhibit. The People ask the Court to consider this
22 exhibit for the demonstration it makes that the accounts at
23 issue in this prosecution were used for other personal
24 expenses, in other words, that it was a personal account.

25 THE COURT: Meaning, the account on which Mr. Trump

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1 drew his checks was used also for telephone expenses,
2 electricity, travel, entertainment, medical, dental and other
3 expenses for his children?

4 MR. COLANGELO: Correct. Yes, your Honor.

5 THE COURT: Objection, Mr. Blanche?

6 MR. BLANCHE: No objection.

7 THE COURT: Received.

8 MR. COLANGELO: That concludes the sealed exhibits,
9 your Honor.

10 THE COURT: Any other exhibits that you wish me to
11 consider?

12 MR. COLANGELO: Yes, your Honor.

13 We ask the Court to consider Exhibit 4. This is not
14 sealed. This exhibit displays three tweets by Donald J. Trump
15 from the Twitter handle @realDonaldTrump all on May 3rd, 2018.
16 The People ask the Court to consider this exhibit for the
17 statement from Mr. Trump that Mr. Cohen received a, quote,
18 reimbursement in connection with, quote, a private contract
19 between two parties.

20 THE COURT: Objection?

21 MR. BLANCHE: No objection.

22 THE COURT: Received.

23 MR. COLANGELO: Your Honor, Exhibit 5, not sealed,
24 this is the text of a statement issued by Rudy Giuliani on
25 May 4th, 2018 --

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1 THE COURT: How do we know that there is attribution
2 to the president?

3 MR. COLANGELO: Your Honor, we can establish
4 attribution through the next exhibits.

5 THE COURT: These are all statements by Giuliani?

6 MR. COLANGELO: Your Honor, Exhibits 5, 6 and 7 are
7 all statements by Mr. Giuliani, yes.

8 THE COURT: An agent can't establish his own
9 authority.

10 Do you object, Mr. Blanche?

11 MR. BLANCHE: No, we don't object.

12 THE COURT: They're received.

13 MR. COLANGELO: Thank you, your Honor.

14 Those, I believe -- and then, in addition, your Honor,
15 we move --

16 THE COURT: So Giuliani said what?

17 MR. COLANGELO: Sorry, your Honor.

18 In Exhibit 5, Mr. Giuliani is saying, quote, the
19 payment was made to resolve a personal and false allegation in
20 order to protect the president's family.

21 In Exhibit 6, Mr. Giuliani says, that was money that
22 was paid by his lawyer. The president reimbursed that over a
23 period of several months.

24 And for Exhibit 7 -- pardon me, your Honor, I need to
25 find the page cite -- at page 4 of Exhibit 7, Mr. Giuliani

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1 says, even if it was considered a campaign contribution, it was
2 entirely reimbursed out of personal funds.

3 THE COURT: Received without objection.

4 MR. COLANGELO: Thank you, your Honor.

5 And then to the extent I did not do this earlier, the
6 People also move in Exhibit 26, the transcript of the president
7 elect's press conference on January 11th, 2017.

8 THE COURT: I don't think 26 helps anything. It's a
9 long exhibit and -- is there objection?

10 MR. BLANCHE: Can we have one moment, your Honor,
11 please.

12 (Conferring)

13 MR. BLANCHE: Your Honor, we don't object to that
14 coming into evidence.

15 THE COURT: I'll admit that which you want to be used,
16 not the rest.

17 MR. COLANGELO: Thank you, your Honor.

18 The passages the People rely on are pages 10, 11 and
19 12 of that exhibit.

20 THE COURT: Received.

21 (Plaintiff's Exhibit 26 received in evidence)

22 MR. COLANGELO: Let me confer with my colleagues and
23 make sure I don't have any other exhibits to move in.

24 (Conferring)

25 MR. COLANGELO: Thank you, your Honor. Nothing

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1 further.

2 THE COURT: Mr. Blanche.

3 MR. BLANCHE: Your Honor, would you like the defense
4 to offer the few exhibits that we have agreed to as well at
5 this point before I argue?

6 THE COURT: Yes.

7 MR. BLANCHE: It's just Exhibit A and B to our
8 declaration -- sorry, two of our declarations, your Honor, both
9 from the original notice of removal and the opposition.

10 Exhibit A from our opposition, your Honor, your Honor
11 read from earlier today, the statement of facts. Exhibit B are
12 a series of emails --

13 THE COURT: Let me catch up with you, please.

14 MR. BLANCHE: -- from Mr. Cohen.

15 THE COURT: Let me catch up with you, please.

16 Exhibit A is a grand jury indictment.

17 MR. BLANCHE: Pardon me, your Honor?

18 THE COURT: Exhibit A is the grand jury indictment.

19 MR. BLANCHE: One moment.

20 So I can start, your Honor, with the affirmation of
21 Ms. Necheles and the notice of removal. Exhibit A is just a
22 copy of the indictment from New York.

23 THE COURT: I don't think I have the document you're
24 referring to.

25 MR. BLANCHE: I can pass it up, your Honor.

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1 THE COURT: I have lots of paper already.

2 Exhibit A to Ms. Necheles' information is a grand jury
3 indictment, is that what you want to offer into evidence.

4 MR. BLANCHE: Exhibit A should be a copy of the
5 indictment in state court, this is from our filing, your Honor
6 on May 4th.

7 THE COURT: I accept the indictment as evidence, I can
8 take judicial notice.

9 MR. BLANCHE: And then Exhibit B, your Honor, is the
10 Morgan Lewis white paper, which was referenced earlier as well.

11 MR. COLANGELO: Your Honor, as to the --

12 THE COURT: I admitted it for what it's worth.

13 MR. COLANGELO: Thank you, your Honor.

14 And the People note the evidentiary objection we
15 identified at page 2, note 2 of our memorandum supporting --

16 THE COURT: What's the objection?

17 MR. COLANGELO: That the Court can consider the white
18 paper for the fact that the statements in the white paper were
19 made, not for the truth.

20 THE COURT: That's the only consideration I'm making.

21 MR. COLANGELO: Thank you, your Honor.

22 MR. BLANCHE: And then, your Honor, the other exhibits
23 that we offer -- first, is a copy of the statement of facts,
24 which you made reference to in your Honor's opening statement
25 that accompany the indictment.

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1 THE COURT: That's all part of the record, that's part
2 of the record that was brought over. It's already in the
3 record in this case.

4 MR. BLANCHE: Thank you, your Honor.

5 And then the last two -- well, there's three other
6 things we offer -- one is an email from Mr. Cohen to several
7 individuals announcing his departure from the Trump
8 Organization, that's attached as Exhibit B to the Blanche
9 affirmation that was filed on June 15th, and a separate email
10 from Mr. Cohen to several individuals, his departure email from
11 the Trump Organization, that is attached as Exhibit B to the
12 Blanche affirmation of June 15th.

13 THE COURT: What are you offering, just B?

14 MR. BLANCHE: Exhibit B to the Blanche affirmation,
15 your Honor.

16 THE COURT: Effective January 20, 2017, I'm accessible
17 as personal counsel to Donald J. Trump. Emails should be
18 directed to -- blank -- and all future calls should be directed
19 to -- blank.

20 MR. BLANCHE: That is the one.

21 THE COURT: Any objection?

22 MR. COLANGELO: No, your Honor.

23 THE COURT: Received.

24 (Defendant's Exhibit B received in evidence)

25 MR. BLANCHE: And then the next email -- which I can

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1 read into the record if your Honor would like -- from Mr. Cohen
2 to several individuals, which is his departure email from the
3 Trump Organization.

4 Do you want me to read it into the record, your Honor?

5 THE COURT: Go ahead.

6 Any objection?

7 MR. COLANGELO: No, your Honor.

8 THE COURT: Go ahead and read it.

9 MR. BLANCHE: Dear all, I cannot express how difficult
10 it is for me to write this email. Ten years ago, when
11 Mr. Trump offered me my position at the Trump Organization, I
12 distinctly remember the indescribable feeling as I took my
13 place in Ivanka's old office. As I am now cleaning out my
14 office to embark on this new journey, that feeling has
15 returned, but this time with a degree of sadness included.
16 Over these ten years, we have shared as a company, as friends,
17 as family so many joyous occasions together, and unfortunately,
18 some sad ones as well. I will be in and out of the office with
19 my final day to say good-bye this Tuesday. We all know too
20 well how the liberal media and the anti-Trump advocacy groups
21 intend on attacking our boss. It is for this reason that I am
22 truly excited to begin my new position as personal attorney to
23 President Donald J. Trump. It is an incredible honor for me,
24 and I look forward to productive and exciting times with
25 President Trump. However, I will very much miss each and every

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1 one of you here at the Trump Organization, and I would like to
2 thank all of you for making my years here memorable ones. You
3 have all been fantastic. And I know you will continue to be so
4 with Don and Eric. If anyone should need me, or just to drop a
5 note telling me how quiet the 26th floor is now that I'm gone,
6 I will be maintaining my cellular number and effective Tuesday
7 my new email address is -- redacted -- yours, Michael Cohen.

8 And then, finally, your Honor, from page 22 of our
9 brief in opposition filed on June 15th, 2023, we quote excerpts
10 from Mr. Cohen's book Disloyal, specifically pages 308 to 310,
11 where Mr. Cohen describes and agrees that at the time that
12 Mr. Cohen would work for President Trump as his personal
13 attorney, he would receive a \$420,000 retainer for the work
14 that he would be doing for President Trump while he was
15 president. So we would offer pages 308 to 310 from Disloyal.

16 THE COURT: What page in your brief?

17 MR. BLANCHE: Your Honor, it's from page 22 from our
18 brief filed on June 15th. The ECF page number is 28 out of 34,
19 your Honor.

20 THE COURT: Mr. Colangelo?

21 MR. COLANGELO: Your Honor, no objection, on the same
22 ground that we identified before, we don't object to it being
23 taken as proof that the statements were made, not --

24 THE COURT: That Mr. Cohen wrote this in his book.

25 MR. COLANGELO: Yes, your Honor.

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1 THE COURT: Received in evidence, then.

2 MR. BLANCHE: Your Honor, I just want to address
3 specifically the point that your Honor and the People spent the
4 most time on today, which is whether Mr. Cohen, acting as
5 President Trump's personal attorney, qualifies as conduct for
6 or relating to any act under federal office. I think there has
7 been some dismissive positions taken by the People, perhaps for
8 good reasoning because we've never been in a position where we
9 are today, with a president being charged for conduct that
10 occurred while he was in office. So I just want to take a
11 minute to step back and flush out what happened in the time of
12 Mr. Cohen becoming President Trump's personal attorney.

13 As has been discussed, in the days and weeks leading
14 up to President Trump taking office, he made a decision to
15 separate himself from his very vast business empire that was
16 very complicated and took a lot of work, as has been publicly
17 discussed and as was discussed here today. Mr. Cohen, up until
18 that time -- and as we just read in the emails -- served and
19 worked at the Trump Organization. But when President Trump and
20 Mr. Cohen were discussing what he would do next, it did not
21 make sense, for obvious reasons, for Mr. Cohen to remain at the
22 Trump Organization because the president had separated himself
23 from the Trump Organization.

24 However, the Constitution puts a very special
25 responsibility and unique responsibility on the President of

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1 the United States that's different from any other office in the
2 land. The Supreme Court has said -- and this is in our
3 brief -- that the president is the only person, he is the only
4 person who alone composes a branch of government. And as a
5 result, there is not always a clear line between his personal
6 and official affairs, that's unique to that position. Your
7 Honor, I would say that's different than the example your Honor
8 gave, a judge who is taking the bench, it's different from any
9 other officer that would try to remove a case. There's not a
10 clear line between his personal and official affairs. The
11 United States Constitution talks about the various clauses that
12 prevent a president from taking any money or anything of value
13 from a state or from a foreign government. And President
14 Trump, because of his holdings, was very concerned, as
15 different articles have described, about not violating his oath
16 and his duty under the Constitution when he's president.

17 So what he did is he agreed for Michael Cohen to
18 become his personal attorney. Nobody disputes any of that.
19 But what the People do then is they stop and say, we're done,
20 he takes office, he has a personal attorney, and there can be
21 no connection between an act of a federal officer arising out
22 of color of the president's job and Mr. Cohen acting as his
23 personal attorney. That is completely false. And the reason
24 for that --

25 THE COURT: Mr. Cohen was paid out of President

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1 Trump's pocket?

2 MR. BLANCHE: Without a doubt. Your Honor --

3 THE COURT: He wasn't paid outside the retainer
4 agreement?

5 MR. BLANCHE: He was paid --

6 THE COURT: \$35,000 a month?

7 MR. BLANCHE: \$35,000 a month as a retainer --

8 THE COURT: And then it stops?

9 MR. BLANCHE: Pardon?

10 THE COURT: And then it stops?

11 MR. BLANCHE: Correct. And then it --

12 THE COURT: November 2017, it stops?

13 MR. BLANCHE: At the end of 2017, it stopped, and it
14 was no longer --

15 THE COURT: Mr. Trump was no longer concerned about
16 mixing public and private affairs?

17 MR. BLANCHE: He no longer needed Mr. Cohen, your
18 Honor.

19 But think about the alternative position, which the
20 People have put forward and which they're charging across the
21 street, which is that all of this money that was paid during
22 that year to Michael Cohen all comes out of the Stormy Daniels
23 payment. So Stormy Daniels is paid \$130,000. Michael Cohen is
24 paid by President Trump \$420,000. And presumably, Mr. Cohen is
25 going to -- I don't know what he's going to say when he

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1 testifies, because he says something different every day -- but
2 presumably, what he is going to say is there was some
3 formula --

4 THE COURT: What he would say is of no concern to me.

5 MR. BLANCHE: Pardon me?

6 THE COURT: It's of no concern what he would say.
7 He's not here, you didn't bring him here.

8 MR. BLANCHE: Well, the People just relied on it in
9 their argument in saying there was a formula where Mr. Cohen
10 was going to be paid --

11 THE COURT: The People relied on a document.

12 MR. BLANCHE: Correct.

13 THE COURT: A document that recorded or made an
14 explanation for the \$420,000.

15 MR. BLANCHE: Correct. And that's --

16 THE COURT: And that's support for their contention.
17 You have given no record support for anything you are
18 saying. There's not a single affirmation of anybody who has
19 knowledge, not a single declaration, not a single affidavit.
20 And the only person who knows what Cohen was hired for is the
21 president, and he's not declaring anything, or Cohen, and he's
22 not here. He's said things and we've had quotations from what
23 he said, including his plea of guilty, but there's no record
24 basis for anything else than what we have gotten, all of which
25 shows private work.

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1 Is the private work related to the public work? You
2 say so, but how do I know?

3 MR. BLANCHE: Your Honor, we introduce evidence about
4 what he said in his book about what it was for and that he went
5 to the oval office --

6 THE COURT: That's hearsay.

7 MR. BLANCHE: Your Honor --

8 THE COURT: If he had something to say, you could
9 bring him here.

10 MR. BLANCHE: Your Honor, if the Court wants to hear
11 from Mr. Cohen directly, that's fine with the defense, your
12 Honor.

13 THE COURT: You should have done that today. Today is
14 the evidentiary hearing.

15 MR. BLANCHE: In the defense's view, your Honor, it's
16 not necessary, because the record contains enough evidence to
17 show exactly what our defense will be at trial and that's --

18 THE COURT: What it shows is that Cohen was hired
19 privately to do something privately. That's what it shows.

20 MR. BLANCHE: Not to do something, your Honor; to help
21 the president deal with his constitutional obligations under
22 the --

23 THE COURT: How do I know that? Is it written in the
24 retainer agreement? Is there a retainer agreement?
25 Mr. Blanche, was there a retainer agreement?

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1 MR. BLANCHE: The checks, the fact that there's
2 \$35,000 monthly checks --

3 THE COURT: Was there a retainer agreement?

4 MR. BLANCHE: Pardon me?

5 THE COURT: Was there a retainer agreement?

6 MR. BLANCHE: The retainer, it's recorded in an
7 invoice, a monthly invoice from Mr. Cohen to the president,
8 it's recorded on the --

9 THE COURT: It's not a retainer agreement. It's an
10 invoice that says, pay me \$35,000 for services rendered. We
11 don't know what, if any, services were rendered.

12 MR. BLANCHE: Your Honor, a retainer agreement in New
13 York isn't required. I'm not aware of a retainer agreement
14 being signed.

15 THE COURT: Of course it's not required. But you are
16 saying it's a specific purpose retainer, it's done to help the
17 president separate private from public. I don't see anything
18 to that effect.

19 MR. BLANCHE: Your Honor, may I just have a moment,
20 please.

21 THE COURT: Sure.

22 (Conferring)

23 MR. BLANCHE: Your Honor, if the Court believes that
24 the evidence that has been offered and accepted, including the
25 checks and the invoice and the recorded ledger on the books of

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1 President Trump's private books underneath the umbrella of the
2 Trump Organization isn't enough, we can agree with the People
3 to call a witness. We also have a witness today that we could
4 call, your Honor, that could further discuss what we believe is
5 not necessary given the evidence in this case, your Honor,
6 which is that these checks were for a retainer and an attorney
7 agreement between President Trump and Michael Cohen. It lasted
8 while he was president, and it was for good reason, your Honor.
9 So this wasn't a hypothetical problem that the president
10 thought he might encounter.

11 THE COURT: You have a witness you want to call?

12 MR. BLANCHE: He was sued --

13 THE COURT: You have a witness you want to call?

14 MR. BLANCHE: Your Honor, if we could take a
15 two-minute recess and discuss, yes, I do.

16 THE COURT: Two minutes.

17 MR. BLANCHE: Thank you.

18 (Recess)

19 THE COURT: Mr. Blanche.

20 MR. BLANCHE: Your Honor, we call Alan Garten.

21 MR. COLANGELO: Your Honor, one request from the
22 People. As the Court knows, the parties stipulated last week
23 that no party intended to call a live witness at this
24 proceeding. We don't object to Mr. Garten's direct testimony
25 being taken today. Given that we had no notice until

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Garten - Direct

1 Mr. Blanche mentioned it from the podium a few minutes ago that
2 there was the possibility of a witness, we would ask that
3 cross-examination be scheduled for tomorrow morning. We think
4 we could do it in less than an hour.

5 THE COURT: Let's see what he has to say first.

6 Go ahead, Mr. Garten.

7 ALAN GARTEN,

8 called as a witness by the Defendant,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BLANCHE:

12 Q. Good afternoon, Mr. Garten.

13 Where do you work?

14 A. The Trump Organization.

15 Q. What is your position with the Trump Organization?

16 A. Chief Legal Officer.

17 Q. And did you have that position -- well, have you had that
18 position since 2016?

19 A. I've been a lawyer there since 2007. I have had that
20 position since January 2017.

21 Q. What was your position prior to January of 2017?

22 A. General counsel.

23 Q. You have been here today during the hearing, have you not?

24 A. Yes, I have.

25 Q. So are you familiar with an individual named Michael Cohen?

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Garten - Direct

1 A. Yes.

2 Q. How are you familiar with him?

3 A. He was employed at the Trump Organization as an attorney
4 for -- I believe since 2007 until January of 2017,
5 approximately.

6 Q. And so January of 2017, approximately, Mr. Cohen left the
7 Trump Organization. Do you have an understanding as to why?

8 A. He left the organization to serve as a personal attorney to
9 President Trump.

10 Q. And as far as you know, did he in fact assume that role as
11 personal attorney to Donald Trump?

12 A. Yes.

13 THE COURT: You can object, Mr. Colangelo, if you
14 want. You can object, you know.

15 MR. COLANGELO: Yes, your Honor.

16 Let me make a record that one of my colleagues, Susan
17 Hoffinger, will enter an appearance and will handle the --

18 MS. HOFFINGER: Good afternoon, your Honor.

19 THE COURT: You will be conducting the
20 cross-examination?

21 MS. HOFFINGER: If appropriate, I will, your Honor.

22 THE COURT: Are there any objections?

23 MS. HOFFINGER: Not so far, your Honor.

24 THE COURT: You are going to handle the objections?

25 MS. HOFFINGER: I will.

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Garten - Direct

1 THE COURT: Why don't you change places with
2 Mr. Colangelo.

3 MS. HOFFINGER: Okay.

4 THE COURT: My policy is that, whether it's a jury or
5 nonjury case, the rules of evidence apply.

6 MS. HOFFINGER: Thank you.

7 THE COURT: Go ahead, Mr. Blanche.

8 MR. BLANCHE: Thank you, your Honor.

9 BY MR. BLANCHE:

10 Q. Do you have an understanding as to whether Mr. Cohen
11 actually assumed the duties as personal attorney to President
12 Trump?

13 MS. HOFFINGER: Objection.

14 THE COURT: Sustained.

15 BY MR. BLANCHE:

16 Q. So when Mr. Cohen left in approximately January 2017, do
17 you know what he did?

18 A. He took on the role of personal attorney to President
19 Trump.

20 Q. And how do you know that?

21 A. I know that from my experience at the organization that
22 this was something that was openly discussed and that
23 Mr. Cohen, I know, was very vocal about his new position and --

24 THE COURT: Is this hearsay you are telling me? It's
25 all hearsay. You don't know yourself. You know what was said

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Garten - Direct

1 in the office.

2 THE WITNESS: No, I do know myself because --

3 THE COURT: What's your personal knowledge?

4 THE WITNESS: My personal knowledge is conversations
5 with Mr. Cohen. And also, when matters would come in that
6 previously may have been dealt with by the organization, but
7 that were now related -- were not corporate related, but
8 related to President Trump or the first lady, those matters
9 would be sent to Mr. Cohen.

10 BY MR. BLANCHE:

11 Q. And when you are talking about in time, you are saying
12 after Mr. Cohen left in January 2017 through the rest of the
13 year when he was serving as counsel to President Trump?

14 A. That's my recollection, yes.

15 Q. And do you know why Mr. Cohen left the Trump Organization
16 to go become private attorney for President Trump?

17 MS. HOFFINGER: Objection.

18 THE COURT: Sustained.

19 MR. BLANCHE: May I ask the reason for sustaining the
20 objection, your Honor.

21 THE COURT: Hearsay.

22 MR. BLANCHE: Well, your Honor --

23 THE COURT: Lay a better foundation.

24 BY MR. BLANCHE:

25 Q. Mr. Garten, were you present or did you have discussions

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Garten - Direct

1 with Mr. Cohen about him leaving the Trump Organization?

2 MS. HOFFINGER: Objection.

3 THE COURT: Sustained -- withdrawn.

4 You may answer that question.

5 THE WITNESS: My office was right next to Mr. Cohen's
6 for many years, so we had a lot of conversations, and this is
7 going back to late 2016, early 2017, so my memory is certainly
8 not perfect there. But certainly, I do know that once
9 Mr. Cohen took on the role of attorney for the president, there
10 were discussions about the need for him to have to leave --

11 MS. HOFFINGER: Objection.

12 THE WITNESS: -- the company.

13 THE COURT: These were discussions between you and
14 Cohen?

15 THE WITNESS: Correct.

16 THE COURT: Overruled.

17 THE WITNESS: If I could just finish. In order to --

18 THE COURT: Don't say what it is. You had
19 discussions.

20 Go ahead, next question.

21 BY MR. BLANCHE:

22 Q. Mr. Garten, was it your understanding, did you believe
23 Mr. Cohen needed to leave -- did you believe that Mr. Cohen
24 needed to leave the Trump Organization in order to fulfill his
25 duties to President Trump?

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Garten - Direct

1 MS. HOFFINGER: Objection.

2 THE COURT: Sustained.

3 BY MR. BLANCHE:

4 Q. Do you have an understanding, Mr. Garten, about whether
5 Mr. Cohen was paid for the work that he did for President Trump
6 after he left the Trump Organization?

7 A. I know he was paid 400 and -- I don't know the exact
8 amounts -- 35 payments -- I'm sorry, 12 payments of \$35,000.

9 Q. And what's the basis of your knowledge of that?

10 A. I just -- I can't point to anything specific, other than my
11 role at the company.

12 Q. Let me ask it another way.

13 Do you have personal knowledge of that fact?

14 A. I knew he was being -- those payments were made to
15 Mr. Cohen in 2017, yes.

16 Q. And do you know why those payments were made to Mr. Cohen?

17 A. My understanding was to reimburse him for the payment that
18 he had made as part of the Clifford settlement agreement and
19 also to compensate him for the work that -- this role that he
20 was playing as counsel.

21 Q. Mr. Garten, going back to the time period between when
22 President Trump was elected and the time that he took office
23 in -- so late 2016 to early 2017 -- were you involved in the
24 discussions about separating President Trump from the Trump
25 Organization while he was president?

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Garten - Direct

1 A. To some degree, yes.

2 Q. And what was the reason for separating President Trump from
3 the Trump Organization?

4 MS. HOFFINGER: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: We were generally advised, I think, as
7 is reflected in the white paper, that there had to be a
8 separation once he took office, that President Trump had to be
9 separated from the company. And so the company then
10 implemented policies to -- in addition to the white paper,
11 which is drafted by Morgan Lewis, the company implemented its
12 own policies to create that separation so that people at the
13 company were not reaching out to President Trump or
14 communicating, things like that. There are documents that I
15 can certainly provide. There were corporate policies that were
16 issued creating the separation.

17 BY MR. BLANCHE:

18 Q. And was it you that made the decision to separate Mr. Cohen
19 from the Trump Organization, given what his role would be with
20 President Trump?

21 A. Not alone. But when I learned that Mr. Cohen would serve
22 as personal attorney, I did provide advice that he needed to
23 exit the company.

24 Q. Why?

25 A. Because if he's going to serve as personal counsel, then it

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Garten - Direct

1 would be inconsistent with all the policies that we implemented
2 to separate the president from the company.

3 Q. Was one of the reasons that Mr. Cohen separated from the
4 Trump Organization, was one of the reasons because of President
5 Trump's constitutional duties that he would take on as
6 President of the United States?

7 MS. HOFFINGER: Objection, leading.

8 THE COURT: Sustained.

9 BY MR. BLANCHE:

10 Q. Mr. Garten, you said that you were part of the discussions
11 to have Mr. Cohen leave the Trump Organization.

12 What were the reasons that you believed it was
13 appropriate and necessary for him to leave the Trump
14 Organization, given his new role?

15 A. That's what we were advised after he -- after President
16 Trump was elected, that's what we were -- we were advised that
17 that was legally required.

18 THE COURT: That was the white paper by Morgan Lewis?

19 THE WITNESS: Correct.

20 THE COURT: The Trump Organization engaged Morgan
21 Lewis to provide legal services?

22 THE WITNESS: I'm not sure if the organization did or
23 President Trump did.

24 THE COURT: And in response to that, Morgan Lewis
25 delivered a white paper?

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Garten - Direct

1 THE WITNESS: Correct.

2 THE COURT: That's in evidence, right, Mr. Blanche?

3 MR. BLANCHE: It is, your Honor.

4 Just a few more questions.

5 BY MR. BLANCHE:

6 Q. I believe you mentioned earlier that you were also part of
7 the -- you know that Mr. Cohen actually took on the role as
8 private counsel to President Trump; correct?

9 MS. HOFFINGER: Objection, leading.

10 THE COURT: Overruled.

11 THE WITNESS: I know that matters that there -- that
12 there were -- when matters came in that were not company
13 related, but related to the president or the first lady, I do
14 know that those matters would be referred to Mr. Cohen. I
15 don't know how many there were. I know that it took place,
16 yes.

17 BY MR. BLANCHE:

18 Q. Understood.

19 Are you familiar with the emoluments clause of the
20 Constitution?

21 A. Very generally. I don't know that anybody is really
22 familiar with the emoluments clause, but yes.

23 Q. Do you have an understanding as to whether -- one of the
24 reasons that Mr. Cohen served in the Trump Organization --

25 THE COURT: He's not here as an expert, is he? If you

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Garten - Cross

1 want to bring out instructions that he gave, advice that he
2 gave, go ahead. But we're not hearing him as an expert.

3 MR. BLANCHE: One moment, your Honor.

4 (Conferring)

5 BY MR. BLANCHE:

6 Q. Mr. Garten, did you have a specific concern that Mr. Cohen
7 needed to leave the Trump Organization because of President
8 Trump's constitutional duties when he assumed the office of
9 president?

10 MS. HOFFINGER: Objection.

11 THE COURT: Sustained.

12 MR. BLANCHE: Sorry, did you sustain the objection?

13 THE COURT: Sustained, yes.

14 I think you are finished, Mr. Blanche.

15 MR. BLANCHE: Yes, I think I am, your Honor.

16 MS. HOFFINGER: Your Honor, we renew our request --

17 THE COURT: No, do it now.

18 CROSS-EXAMINATION

19 BY MS. HOFFINGER:

20 Q. Good afternoon, Mr. Garten.

21 A. Good afternoon.

22 Q. Mr. Garten, you said you were general counsel of the Trump
23 Organization; is that correct?

24 A. Correct.

25 Q. And for many years; is that right?

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Garten - Cross

1 A. Different legal positions during my tenure; assistant
2 general counsel, general counsel and chief legal officer.

3 Q. And as your role as general counsel or chief legal officer
4 for the Trump Organization, did you handle payments for
5 attorneys who worked either for the Trump Organization or for
6 Donald Trump?

7 A. When you say "handled" --

8 Q. Withdrawn. Let me ask a more specific question.

9 When attorneys were retained to work either for
10 Mr. Trump personally or for the Trump Organization, what was
11 the process of them being retained and paid at the Trump
12 Organization?

13 MR. BLANCHE: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: The lawyers would be engaged and the
16 documentation would be processed and sent over to accounting to
17 make whatever payments were required.

18 BY MS. HOFFINGER:

19 Q. Well, let's talk about some of the documentation.

20 When you say that the lawyers were retained, was there
21 a retainer agreement for attorneys who were working either for
22 Donald Trump in his personal capacity or for the Trump
23 Organization?

24 A. I would say, typically, yes. Not necessarily in every case
25 or every matter, but typically, yes.

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Garten - Cross

1 Q. Typically would be in the vast majority of matters; is that
2 correct?

3 MR. BLANCHE: Objection, misstates testimony.

4 THE COURT: Overruled.

5 THE WITNESS: More often than not.

6 BY MS. HOFFINGER:

7 Q. So, for example, when the law firm Vinson Elkins was
8 retained to do work personally for Donald J. Trump in his tax
9 matters, was there a retainer agreement in that?

10 A. I'm not familiar with that representation. But I'm
11 certainly not arguing that the practice is to have a written
12 retainer --

13 THE COURT: I think you have gotten that.

14 MS. HOFFINGER: I'll move on, your Honor.

15 BY MS. HOFFINGER:

16 Q. Was it a fact that those retainer agreements were reviewed
17 by your office, as legal counsel, as part of the retention?

18 A. Generally, yes.

19 Q. And would those lawyers who were retained by Donald Trump
20 personally or by the Trump Organization, would they submit
21 invoices with details of their work?

22 A. Generally, yes.

23 Q. And were those reviewed by your office, the office of legal
24 counsel or general counsel, of the Trump Organization?

25 A. That's the general practice, yes.

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Garten - Cross

1 Q. And were those amounts that were paid to those law firms
2 pursuant to retainer agreements also recorded in the general
3 ledgers of Donald J. Trump personally, as well as the Trump
4 Organization?

5 A. Yeah, they would be recorded in whichever -- yeah,
6 whichever -- the ledger of whichever entity was retaining that
7 lawyer or --

8 THE COURT: Ms. Hoffinger, this is not a discovery
9 matter.

10 MS. HOFFINGER: I'll try to get to the points that I
11 can.

12 BY MS. HOFFINGER:

13 Q. Now, in the case of Michael Cohen, when he left the Trump
14 Organization and he became a personal attorney to President
15 Trump, was there a retainer agreement that covered that
16 retention?

17 A. I'm not aware of a written retainer agreement.

18 Q. Does that mean that there was no retainer agreement, sir?

19 A. Not that I've ever seen, no.

20 Q. And were invoices submitted by Mr. Cohen that detailed the
21 work that he performed for Donald Trump in 2017?

22 A. From what I have seen, they were just summary -- I would
23 call them summary invoices, but no detail.

24 Q. In other words, with just the monthly amount, no detail?

25 A. Correct, I think for services rendered or something to

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Garten - Cross

1 that -- and then just a flat amount.

2 Q. And that was unusual, was it not, for the Trump
3 Organization, with relation to the Trump Organization records
4 related to lawyers?

5 A. Not typical, but -- but it does happen.

6 Q. As you sit here, do you have any idea of the personal work
7 that Michael Cohen did in 2017 for Donald Trump?

8 A. I certainly know, because I did it, when matters that would
9 come in -- I'm not saying -- I don't know how many matters
10 there are -- but there was occasion when matters that would
11 come in would be brought to my attention that I did not believe
12 were corporate matters, things that involved the corporate
13 business of the organization, that involved the president or
14 the first lady, those I would send to Mr. Cohen.

15 Q. And you don't know if Mr. Cohen actually did work on those
16 matters, though, do you?

17 A. No.

18 Q. And he didn't provide invoices detailing work on those
19 matters; is that right?

20 A. No, just the summary bill he would send.

21 Q. And again, that was different from any other lawyer or law
22 firm who did work at the Trump Organization or --

23 THE COURT: I think you made that point.

24 MS. HOFFINGER: I'll move on, your Honor.

25 BY MS. HOFFINGER:

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Garten - Cross

1 Q. I asked you a question about the general ledger and whether
2 the general ledger generally recorded the work of lawyers, for
3 the Donald Trump general ledger, are you aware of that?

4 A. The ledger would record payments to -- in the case of
5 lawyers, yeah, it would -- if President Trump engaged a law
6 firm or lawyer, then that would typically be paid out of his
7 personal account and recorded on his personal ledger.

8 Q. And in fact, those general ledgers, his personal general
9 ledgers would actually also describe the type of work that each
10 of those law firms did; correct?

11 A. Correct. There would be a code, and the code corresponds
12 to -- like, for example, legal expenses has a code or something
13 else had a different code.

14 Q. In addition to the legal code, there would be actual
15 description of the matter that was worked on by that law firm
16 or those lawyers; isn't that correct?

17 A. That, I'm not sure about.

18 MS. HOFFINGER: If it's okay, your Honor, I'm going to
19 hand up some pages from the Donald Trump personal general
20 ledger. I'd like to show it to defense counsel first.

21 THE COURT: It seems to me that you are more focused
22 on discovery for your case.

23 MS. HOFFINGER: I'm sorry, your Honor, I just wanted
24 to show him one page of the general ledger and have him confirm
25 that in every other case there's a description of the type of

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Garten - Cross

1 matter that that law firm performed.

2 THE COURT: Go ahead.

3 MS. HOFFINGER: Thank you.

4 BY MS. HOFFINGER:

5 Q. So I'm handing up, sir, just as an example, the Donald J.
6 Trump detailed general ledger -- it's DANY 136744 -- and it's
7 account legal expense, and it's for the months of February of
8 2017 and March of 2017, April of 2017 as an example.

9 MS. HOFFINGER: Would it be all right if I handed that
10 to the witness, your Honor.

11 THE COURT: You may.

12 BY MS. HOFFINGER:

13 Q. I ask you, sir, to just take a look at this page and the
14 page following. Take a moment and just see if there's a
15 description for every law firm and every lawyer of the type of
16 work that is engaged, but in fact there's no such description
17 for Michael Cohen.

18 MR. BLANCHE: Objection, misstates the --

19 THE COURT: Sustained.

20 BY MS. HOFFINGER:

21 Q. Is it a fact that the general ledger entries in the vast
22 majority of cases show the type of work, the type of engagement
23 of those lawyers?

24 A. In the vast majority -- not all, in fairness -- but the
25 vast majority, yes.

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Garten - Cross

1 Q. And would you turn to the next page for the one for Michael
2 Cohen, where it's circled, and is there a description there for
3 the work of Michael Cohen?

4 A. There's no description.

5 MS. HOFFINGER: Thank you.

6 Q. Now, sir, just a question, Michael Cohen's title before he
7 left the Trump Organization was special counsel to Donald J.
8 Trump, was it not?

9 A. Correct.

10 Q. And when he left, he had a similar title, personal attorney
11 to the president, though, in that case?

12 A. Yes.

13 Q. Now, in 2017, you said he was paid a total of about
14 \$420,000; is that right?

15 A. Yes.

16 Q. And as far as you know, after 2017, he continued to be the
17 personal attorney for Donald J. Trump; is that right?

18 A. I believe so, yes.

19 Q. And in fact, however, he was not paid anything by either
20 Donald J. Trump personally or the Trump Organization in 2018;
21 is that correct?

22 A. Not that I'm aware of, no.

23 Q. Now, you mentioned, sir, the white paper, which is in
24 evidence here. And you mentioned that Mr. Cohen --

25 THE COURT: Let me get that straight.

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Garten - Cross

1 Cohen continued to work for Trump in 2018?

2 THE WITNESS: I know he -- I believe so. I know he
3 represented -- certainly was representing himself -- what work
4 he was doing, I couldn't really tell you, but it's probably for
5 the whole of 2017 as well, but --

6 THE COURT: Without payment?

7 THE WITNESS: I don't know of any payments that were
8 made to him. I know he was certainly on TV representing
9 himself as personal attorney, but I do not know of any payments
10 made to him in 2018.

11 BY MS. HOFFINGER:

12 Q. In fact, all payments stopped at the end of 2017 when the
13 \$420,000 had been fully paid; is that correct?

14 A. Yeah, I'm not -- I'm not aware of any payments in 2018,
15 correct.

16 Q. Now, you mentioned that it was your understanding that it
17 was part of the work of Morgan Lewis & Bockius, perhaps Sheri
18 Dillon that led to the white paper and the separating of the
19 business of the Trump Organization from President Trump?

20 A. Yes. It was Sheri Dillon, and there was a lawyer who I am
21 blanking on, who I think was a former White House counsel, but
22 I could be wrong. I'm blanking on his name.

23 Q. You said it was your understanding that the separation of
24 Michael Cohen, the need to separate him from the Trump
25 Organization was part of that work of Morgan Lewis which

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Garten - Cross

1 resulted in the white paper; is that right?

2 A. No. I don't believe the need to separate Mr. Cohen
3 emanated from Morgan Lewis.

4 Q. Who did it emanate from?

5 A. Myself and Eric Trump.

6 Q. You said you got advice that it was appropriate for Michael
7 Cohen to leave the company as a result of Donald Trump being
8 president, did you not?

9 MR. BLANCHE: Objection, misstates his testimony.

10 THE COURT: Overruled.

11 The witness can clarify if he wishes to.

12 THE WITNESS: I don't recall saying that. If I did, I
13 misspoke.

14 But I don't recall getting advice from Morgan Lewis
15 about the need to separate -- this is going back years, so my
16 memory, admittedly, could be wrong. I don't remember -- I
17 certainly don't remember getting advice from Morgan Lewis on
18 that. If I said that earlier, I apologize, I misspoke.

19 BY MS. HOFFINGER:

20 Q. Have you had occasion to read the white paper that's in
21 evidence here?

22 A. Not in quite a while.

23 Q. Does Michael Cohen appear anywhere in the white paper as
24 being part of the separation --

25 THE COURT: Stop right there. We have it.

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Redirect - Garten

1 MS. HOFFINGER: Your Honor, a moment to speak with my
2 colleagues.

3 (Conferring)

4 MS. HOFFINGER: Nothing further, your Honor. Thank
5 you for your patience.

6 THE COURT: Thank you.

7 Mr. Blanche, redirect.

8 MR. BLANCHE: Briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BLANCHE:

11 Q. Mr. Garten, you were asked some questions on
12 cross-examination about the general ledger accounts for various
13 law firms and attorneys, whether there's any detail and
14 expenses associated with that ledger.

15 Do you remember those questions?

16 THE COURT: Was there any detail about services.

17 MR. BLANCHE: About services provided by the law
18 firms, correct.

19 BY MR. BLANCHE:

20 Q. Do you remember those questions?

21 A. Yes.

22 MR. BLANCHE: May I approach, your Honor, and show him
23 the ledger that was showed to him before. May I approach, your
24 Honor.

25 THE COURT: Yes.

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Redirect - Garten

1 BY MR. BLANCHE:

2 Q. Mr. Garten, can you take a look at the handful of pages
3 from the general ledger that you were previously shown and look
4 at the -- focusing on the ones that are highlighted in pen.

5 A. Yeah, I see it.

6 Q. So are there in fact several entries for law firms where no
7 description for services is included on the general ledger?

8 A. Yup, yeah --

9 THE COURT: To sum up this point, for the large
10 majority of instances where law firms delivered services, they
11 gave details. But in some instances, they didn't give details.
12 Is that correct?

13 THE WITNESS: That's accurate.

14 THE COURT: I think I have that very fascinating
15 point.

16 BY MR. BLANCHE:

17 Q. For example, do you see the name John Dowd on that ledger?

18 THE COURT: I have it, I have it. The vast majority,
19 one way; sometimes the other way, Mr. Blanche.

20 MR. BLANCHE: Yes, your Honor.

21 THE COURT: That's going to make the whole case.

22 BY MR. BLANCHE:

23 Q. Mr. Garten, you can put that to the side.

24 Is one reason that there would be a lack of
25 description is if an attorney was just paid a flat fee every

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Redirect - Garten

1 month?

2 A. It could be. I can't say definitively, I'm not the person
3 recording, I'm in the legal department. This is generated by
4 the accounting department.

5 THE COURT: I don't --

6 THE WITNESS: I can't say.

7 THE COURT: Can we go to another interesting point.

8 MR. BLANCHE: Yes, your Honor.

9 So just one more question, if I could just have one
10 moment, your Honor.

11 (Conferring)

12 BY MR. BLANCHE:

13 Q. You were asked some questions about whether payments were
14 made to Mr. Cohen in 2018.

15 Do you recall those questions?

16 A. Yes.

17 Q. Do you recall whether Mr. Cohen was -- whether his
18 residence was searched by the FBI in early, mid 2018?

19 A. I recall that, yes.

20 Q. Is it your understanding that one of the reasons why
21 President Trump stopped paying Mr. Cohen was because of his
22 legal troubles?

23 MS. HOFFINGER: Objection.

24 THE COURT: If you know.

25 THE WITNESS: I can't say definitively.

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1 MR. BLANCHE: Thank you. No further questions.

2 MS. HOFFINGER: Just one question, your Honor. I can
3 do it from here.

4 THE COURT: Yes.

5 RECROSS EXAMINATION

6 BY MS. HOFFINGER:

7 Q. Mr. Blanche asked you about John Dowd, who was an attorney
8 who was retained to work for Mr. Trump; is that right?

9 A. He did, yes.

10 Q. Do you know what Mr. Dowd did for Mr. Trump?

11 MR. BLANCHE: Objection, your Honor. It was
12 sustained.

13 THE COURT: Sustained.

14 BY MS. HOFFINGER:

15 Q. There was in fact a retainer agreement between Mr. Dowd --
16 was there --

17 MR. BLANCHE: Objection.

18 THE COURT: Sustained.

19 Thank you very much, Mr. Garten.

20 THE WITNESS: Thank you.

21 THE COURT: Next, Mr. Blanche, still on the topic of
22 color of office.

23 MR. BLANCHE: Your Honor, thank you.

24 So picking up where I left off, your Honor, the
25 question is whether the work that Mr. Cohen was doing in his

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1 personal capacity for President Trump was in any way related to
2 the office and part of his duties as president. And the
3 reality is, this was an extraordinarily complicated
4 arrangement, because you have a very successful businessman who
5 had businesses all over the world who was immediately
6 challenged upon winning the election with issues surrounding
7 payments from foreign governments and from states that would
8 potentially violate the Constitution and violate his duties
9 under the Constitution.

10 And these challenges weren't just hypothetical, your
11 Honor. There were multiple cases filed, as your Honor knows,
12 while President Trump was in office accusing him of violating
13 the various constitutional clauses that would prevent him from
14 profiting from other states. So the fact that he made the
15 decision to hire Mr. Cohen as his personal attorney and paid
16 him a retainer, which is our defense, and which we will
17 establish at trial, is certainly related to the office of
18 president.

19 THE COURT: I have two questions on this.

20 If it's a federal function, why wasn't a federal
21 official performing the function? And the second is, if
22 Mr. Cohen was brought over to the White House to conduct
23 personal affairs, it doesn't lower the suspicion, rather, it
24 raises the suspicion that there was a mixture of public and
25 private business.

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1 MR. BLANCHE: As the Supreme Court says, there's not a
2 clear line between his personal and --

3 THE COURT: That was one of the criticisms that was
4 made. Okay. I got it.

5 MR. BLANCHE: Your Honor, respectfully, the reason why
6 the president believed he needed a personal counsel is because
7 the Trump Organization lawyers were loyal to the corporation
8 when there was a separation, and the White House counsel
9 lawyers did not represent the president in his personal
10 capacity, they represent the office of the presidency. Again,
11 when you look at the -- so the reality --

12 THE COURT: So if Cohen is a private lawyer working on
13 private matters for the president, how does that become related
14 to any color of office?

15 MR. BLANCHE: Because of the unique position of the
16 president of United States. It is the only office in this land
17 where he is the entire Executive Branch and where there will be
18 times -- and indeed there were times -- where there would be
19 challenges to his private business affairs and whether he was
20 violating the United States Constitution, which, at the end of
21 the day, is what he was sworn to uphold because of actions he
22 took or was considering taking.

23 THE COURT: Does the office of legal counsel, the
24 Department of Justice address such questions?

25 MR. BLANCHE: Well, your Honor, there was the White

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1 House counsel's office that certainly represented the office of
2 the president. But as we know happened, President Trump was
3 sued along the way repeatedly for violating the Constitution
4 and for violating obligations under the Constitution --

5 THE COURT: Where it was appropriate for the public to
6 respond to those allegations, they did with federal officials,
7 and where it wasn't, it did it through private officials. I
8 think I have this point. Let's move on to preemption.

9 MR. BLANCHE: Your Honor, thank you. Just one final
10 point, and then I'll move on.

11 One of the challenges that they're talking about with
12 the emoluments clause and whether he violated it, still present
13 challenges. I mean, the circuits dismissed two of the cases
14 shortly after President Trump left office, so this was a
15 general real concern that still is not settled.

16 The third question, your Honor, is whether there's a
17 colorable defense. We've raised several in our brief. I don't
18 think it's necessary to spend a lot of time on them this
19 afternoon. The one is the one we've been talking about for the
20 majority of this argument, which is that one is that the
21 payments made to Mr. Cohen were in fact for services provided
22 while President Trump was in office, occupying the office of
23 the presidency.

24 The second and just as significantly, the fraud
25 statute that the People -- even the misdemeanor fraud statute

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1 requires an intent to defraud, your Honor. And the only intent
2 to defraud that's applicable here -- and this is from the
3 district attorney's statement of facts itself -- is a violation
4 of the federal election laws.

5 THE COURT: That's the preemption argument.

6 MR. BLANCHE: Pardon?

7 THE COURT: That's the next argument we're going to
8 get into.

9 So we'll start with Mr. Colangelo. The motion to
10 remand is because there's no federal defense; right?

11 MR. COLANGELO: Yes, your Honor.

12 There's no colorable federal defense. And the
13 defendant has to establish every element of the test. This is
14 just one of the elements on which the Court could remand.

15 Mr. Blanche just said one of their arguments regarding
16 a colorable federal defense is the possibility of federal
17 preemption. Their preemption argument really is that the
18 People couldn't bring charges under state election law 17-152
19 on these facts. But the defendant is not charged on that
20 statute.

21 For the charge the People did bring, the 34 counts of
22 falsifying business records, that statute functionally has two
23 components; conduct and intent. There's no argument that the
24 conduct, falsifying entries in the business records, there's no
25 argument that the conduct is preempted by the Federal Election

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1 Campaign Act. The argument is that the People are somehow
2 precluded from establishing the intent element from the state
3 law violation because of preemption. And that's not right for
4 a couple of reasons.

5 First, it mischaracterizes state law. The penal law
6 violation the defendant is charged with committing here, the
7 general intent statute, does not require proof regarding any
8 particular crime. So there's no -- and there can't be --
9 preemption based on a criminal offense that the People did not
10 charge and don't have to establish as any element of the
11 charges they did in fact bring.

12 But separately, the election law violation is only one
13 of several available crimes that the defendant, according to
14 the People's allegations, intended to conceal or commit. So
15 even if the election law charges were preempted, the election
16 law was preempted, there are other nonpreempted crimes at play
17 here; tax law violations, state falsification of business
18 records violations. And if the defense is right that the
19 election law is preempted, that would necessarily mean, because
20 it conflicts with the Federal Election Campaign Act, there's a
21 federal violation the defendant intended to commit as well.

22 So preemption is not a colorable federal offense,
23 because it's not a defense. They could be right on the
24 election law argument. The People could still establish the
25 defendant's guilt at trial on any of a number of the other

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1 showings I just described.

2 The second argument as to colorable federal defense,
3 your Honor, is an argument about Supremacy Clause immunity.
4 Unless the Court has questions on the preemption argument, I'll
5 turn to Supremacy Clause. The argument as to why that defense
6 is not colorable, overlaps with the argument that the defendant
7 was not acting under color of his office. And I think the
8 testimony we just heard establishes that, at least part of the
9 \$420,000 reimbursement, was reimbursement for the Stephanie
10 Clifford payment. There's no documentation of any legal
11 services that were in fact performed, no documentation or
12 testimony regarding --

13 THE COURT: There's no competent evidence that
14 anything was done by Cohen as special counsel to the president.

15 MR. COLANGELO: That's right, your Honor.

16 And so where nothing --

17 THE COURT: All we have are the invoices.

18 MR. COLANGELO: That's correct.

19 And so, your Honor --

20 THE COURT: Is that right? The only thing we have are
21 the invoices, no proof of what he did?

22 MR. COLANGELO: So even on --

23 THE COURT: Am I right?

24 MR. COLANGELO: That's certainly the People's
25 understanding, yes.

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1 So even on the most generous reading of the facts in
2 the record, those facts dispose of the argument for the reasons
3 we've discussed; these were personal payments to a personal
4 lawyer handling his personal affairs.

5 And by contrast, your Honor, cases where courts find
6 that there is Supremacy Clause immunity, those are cases where
7 the federal actors were doing their jobs as government actors:
8 The DEA agent in New York v. Tanella in a buy and bust case;
9 the deputized FBI agent in Texas v. Kleinert, who was pursuing
10 a robbery suspect; it was the wildlife service officers
11 collaring gray wolves during an animal reintroduction in
12 Wyoming v. Livingston.

13 There's no argument that anybody here was doing
14 anything in carrying out their job as a government actor. So
15 for that reason as well the Supremacy Clause is just not a
16 colorable defense in this case. Unless the Court has
17 questions.

18 THE COURT: We have a statute that deals with
19 falsification of business records when committed with an intent
20 to commit another crime or to aid or conceal the commission,
21 Section 175.10.

22 Now, if the intent is to commit another crime that is
23 preemptive, is the intent requirement satisfied?

24 MR. COLANGELO: So your Honor, I think, in this case,
25 the answer is yes, because the necessary consequence of the

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1 crime being preempted is that there is a different, another
2 crime that the defendant could have intended to commit or
3 conceal; the Federal Election Campaign Act violation. So in
4 other words, the only argument that the election law violation
5 is preempted is that FECA expressly pre-empts it. Well, if
6 FECA expressly pre-empts that conduct --

7 THE COURT: You believe that it does?

8 MR. COLANGELO: No, your Honor. We don't believe that
9 FECA pre-empts the election law violation. We didn't argue it
10 in our papers because it's not at all necessary for the Court
11 to reach that conclusion in order to determine --

12 THE COURT: That's because the requirement of intent
13 is not subject to preemption?

14 MR. COLANGELO: Yes, that's one reason why the intent
15 element of the false business records offense can't be granted.
16 Yes, your Honor.

17 If this were a prosecution for the election law
18 offense, which it isn't, there are strong arguments that the
19 election law --

20 THE COURT: So you are not prosecuting Mr. Trump for
21 violating the election law?

22 MR. COLANGELO: Correct, your Honor.

23 THE COURT: If you were prosecuting him for intending
24 to violate the election law, would it be preempted?

25 MR. COLANGELO: No.

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1 THE COURT: And why not?

2 MR. COLANGELO: Well, for three reasons: First, there
3 are -- under New York Law, he doesn't have to have effectively
4 committed or aided the commission of another crime. It's a
5 general intent to commit crime.

6 THE COURT: He could be acquitted for the other crime?

7 MR. COLANGELO: Exactly.

8 Second, even if you take the election law out of the
9 picture, the People have alleged that the intent to conceal the
10 commission of other crimes have nothing to do with the election
11 law.

12 THE COURT: What is the conceivable tax crime?

13 MR. COLANGELO: The conceivable tax crime, your Honor,
14 would be falsely mischaracterizing the reimbursement in order
15 to disguise the true nature of the repayment.

16 THE COURT: There's no harm to the state.

17 MR. COLANGELO: For certain violations of the tax law,
18 your Honor, pecuniary harm to the state is not required to
19 violate the tax law. That's described in our response to the
20 bill of particulars request that the defense submitted.

21 Your Honor, the final reason is that, if there were an
22 election law violation, then defendant, the People would
23 allege, intended to conceal or commit violations of federal
24 law. And we know there are violations of federal law, because
25 a federal judge in this courthouse accepted a guilty plea from

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1 Michael Cohen for committing two counts of FECA violations.

2 THE COURT: Mr. Blanche.

3 MR. COLANGELO: Thank you, your Honor.

4 MR. BLANCHE: Your Honor, the People skipped a step.

5 The statute that President Trump has been indicted under
6 requires an intent to defraud. And the intent to defraud can
7 only be a violation of --

8 THE COURT: This says with intent to commit another
9 crime.

10 MR. BLANCHE: That's the next clause.

11 The underlying crime is falsifying business records in
12 the first degree. You have to commit that crime with an intent
13 to defraud, even if it's just a misdemeanor, even if it's the
14 underlying misdemeanor. And the question is whether --

15 THE COURT: Let me get this straight. The idea of
16 falsifying business records is intending to defraud?

17 MR. BLANCHE: Requires an intent to defraud, yes, your
18 Honor, absolutely. And when you think about --

19 THE COURT: What's federal about that?

20 MR. BLANCHE: Well, the intent to defraud -- I'll read
21 from the very first paragraph of the statement of facts from
22 the grand jury across the street -- "The defendant, Donald J.
23 Trump repeatedly and fraudulently falsified New York business
24 records to conceal criminal conduct that hid damaging
25 information from the voting public during the 2016 presidential

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1 election." That's not my words; that's their words. So the
2 intent to defraud, the falsifying of business records, the
3 reason why that was done, according to the People, in the very
4 first paragraph of their statement of facts, is to hide
5 damaging information from the voting public during the 2016
6 presidential election.

7 And moving on to the felony, they then -- to the
8 felony kicker that's part of the statute -- they then say,
9 well, maybe we're going to prove some kind of tax fraud, maybe
10 we're going to prove state election fraud. That's not the case
11 and that's not going to happen. This is all about purported
12 federal election violations that Mr. Cohen pled guilty to,
13 obviously, and nobody else. And recall, as Mr. Colangelo just
14 noted that a federal judge in this district did accept
15 Mr. Cohen's guilty plea, but the Southern District of New York,
16 US Attorney's Office, refused to move forward with charges
17 against anyone else, as, frankly, did the district attorney for
18 several years.

19 So there's no doubt that the 2016 election is the
20 reason for these 34 counts against President Trump. And the
21 papers and everything that the People put in their argument to
22 the contrary are just -- they're wrong. And they're wrong
23 because you can look at the statement of facts, they're wrong
24 because you can look at the evidence that they offered to the
25 grand jury as part of the statement of facts. And that's why

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1 there's preemption. Because we would prove, and we have a
2 right to have a federal judge decide and hear, whether there
3 was any election law violation.

4 (Conferring)

5 MR. BLANCHE: Your Honor, my colleague just pointed
6 out something that is worth noting. The People want this both
7 ways; on the one hand they rely on the purported federal
8 election violations in the statement of facts, in the overall
9 conduct that they charge in the indictment itself, but then
10 turn around in the bill of particulars and say, well, we may
11 prove something else, we may prove other crimes. And so while
12 we rely on the fact that there's a federal election violation,
13 we don't really have to. And they can't have that both ways.
14 They can't do that.

15 THE COURT: There are cases that I have just been
16 looking for, which say that if you commit fraud in the context
17 of an election, that's still a state crime. The case is
18 *WinRed v. Ellison*. WinRed was a conduit political action
19 committee, which collected centralized donations for Republican
20 affiliated candidates and committee.

21 MR. BLANCHE: But, Judge, the only fraud that they're
22 alleging is the failure of Mr. Cohen to --

23 THE COURT: It says, "As a federal PAC, WinRed must
24 comply with the Federal Election Campaign Act or FECA," which
25 is what we're talking about here, but they committed a fraud.

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1 And because they committed a fraud, they were not entitled to
2 FECA --

3 MR. BLANCHE: Your Honor, if there's no federal
4 election violation, there can be no intent to defraud. There's
5 no defrauding, right. And so the underlying intent to defraud
6 has to do, supposedly, with Mr. Cohen's obligation to report
7 the campaign contribution that he made when he made the payment
8 to Ms. Daniels. We contest whether that was a federal election
9 violation at all.

10 But if there was no federal election violation, then
11 there is no crime. Because, again, the general statute, the
12 general false business records statute that President Trump has
13 been charged with requires an intent to defraud. So if there
14 was no underlying federal election violation, there's no crime.
15 And that is exactly why it belongs in this courthouse and not
16 across the street. Because determining whether it's a federal
17 election violation is something that this court should do, not
18 the state.

19 THE COURT: In the WinRed case I just mentioned, which
20 is a decision of the Eighth Circuit, 59 F.4th 934 decided in
21 2023, the state attorney general was conducting an
22 investigation on fraud conducted by a regulated PAC, regulated
23 under FECA. Nevertheless, the Court held that the state fraud
24 laws would still apply.

25 And similarly, here, the fact that there was a

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1 falsification for the purpose of committing elections fraud
2 doesn't mean necessarily that the falsification itself is
3 preempted. It's a matter of state law, according to the WinRed
4 case. And I think that's sound law.

5 What we have here is a statute that says falsification
6 with intent, the falsifying of books and records is the crime,
7 and the intent to commit another crime -- whatever that crime
8 is -- makes it a heightened crime in the first degree. That's
9 the statute.

10 MR. BLANCHE: Agreed, your Honor.

11 But even before you get to the heightened crime, the
12 underlying business records violation still requires an intent
13 to defraud. It's not merely the fact that there's something
14 false --

15 THE COURT: Do you agree with that, Mr. Colangelo?

16 MR. COLANGELO: Yes, your Honor. Falsifying business
17 records in the second degree requires an intent to defraud,
18 yes.

19 MR. BLANCHE: So the issue is, if you write something
20 down in your --

21 THE COURT: That means deceit. You are falsifying the
22 books to deceive somebody, cover something up; right?

23 MR. COLANGELO: Yes, your Honor.

24 And there's case law from the New York Court of
25 Appeals that --

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1 THE COURT: It doesn't make any difference what
2 purpose you have for deception.

3 MR. COLANGELO: Correct. And it doesn't have to be
4 economic fraud.

5 THE COURT: It can be any deception at all.

6 MR. BLANCHE: But that's where the People's theory has
7 to matter, your Honor. We're stuck with what the People have
8 said to us, as is the Court. And the statement of facts makes
9 plain exactly what intent to defraud President Trump engaged in
10 throughout the statement of facts, but certainly in the first
11 paragraph. And that's where -- I say, again, if there's no
12 election violation, there can be no underlying intent to
13 defraud by writing legal representation instead of something
14 else in the books and records of his private records held by
15 the Trump Organization.

16 And so skipping immediately to the felony kicker of
17 intent to conceal another crime, you don't even get there. I
18 mean, you can stop with the intent to defraud. But even if you
19 did get there, this is where the People are, in short, playing
20 games. Because they recognize that they face challenges with
21 the federal election law violation and the fact that SDNY
22 didn't move forward, the fact that the last district attorney
23 didn't move forward. So what they have done is they said,
24 well, maybe we'll prove a different crime, maybe we'll prove
25 some kind of tax fraud. We don't know what the evidence could

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1 possibly be. We have seen no evidence of such. We know of no
2 evidence that there were any taxes that were filed that were
3 wrong or inaccurate or misstated income. And then there's
4 state election violations that, again, are preempted by federal
5 law and that we expect we would be able to show by federal law.

6 And so what you really are left with is a federal
7 election violation that's been repackaged as false business
8 records by the district attorney in order to indict President
9 Trump.

10 And again, just now ending, your Honor, that's exactly
11 why we belong in this court, because there's no doubt that --
12 while this has been categorized as a false business record --
13 and remember what the proof is, your Honor, is that while
14 President Trump was in the oval office sitting as president,
15 somebody at the Trump Organization wrote in the ledgers "legal
16 representation." And again, I believe we have shown through
17 the testimony of Alan Garten today and the legal records, that
18 that's an accurate depiction. It's not false. And Alan Garten
19 testified that he knows for certain that work was being done by
20 Mr. Cohen in his personal capacity when he left, because he
21 sent him things, he sent him documents.

22 THE COURT: He sent him things, but he doesn't know
23 what happened. He doesn't know the end result of sending.

24 MR. BLANCHE: Why does that matter, respectfully, your
25 Honor? It doesn't matter whether Mr. Cohen did a good job or a

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1 bad job.

2 THE COURT: It matters what work he did.

3 I think I get the picture.

4 Anything else, Mr. Blanche?

5 MR. BLANCHE: Not unless your Honor has any questions.

6 THE COURT: Mr. Colangelo.

7 MR. COLANGELO: No, your Honor. Thank you.

8 THE COURT: Thank you all very much.

9 Well, I have read the papers. I have read the
10 extensive papers in this case, taken evidence, I have read the
11 briefs, and I have heard oral arguments. I intend to write and
12 hopefully issue a decision within two weeks. But it's been my
13 habit as judge to let the parties know what my present
14 attitudes are, and I thought to do that here.

15 First, on the issue whether the president is an
16 officer who can remove within the meaning of Section 1442(a) --
17 and for the reasons soon to be discussed, I decline to make a
18 firm ruling on this issue -- it seems to me that the answer has
19 to be yes, that the president is someone who can remove for the
20 reasons discussed earlier; the lines of cases that allow other
21 elected officials, for example, Congressmen and the like, who
22 were not officials, but nevertheless considered officers, to
23 remove. And the absurdity of having the president sued in a
24 way that attacked what he did without being able to remove to a
25 federal court and create a defense I think all argue in favor

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1 of the president being such an officer. But as I say, it's not
2 necessary for me to involve myself in that particular issue,
3 because I think the argument is very clear that the act for
4 which the president has been indicted does not relate to
5 anything under color of his office or on account of any right,
6 title or authority claimed under the act of Congress or the
7 apprehension of punishment of criminals or the collection of
8 the revenue, those being the words of Section 1442 here.

9 What we have, basically, if the indictment is to be
10 believed -- and for the purposes of this case and since the
11 support given by the stipulated facts entered into the record,
12 there is substance to believe those statements and state a
13 prima facie case at least.

14 The president is charged with, in effect, hush
15 payments and the money being advanced by Cohen and the money
16 being repaid to Cohen by the president through the means of
17 these retainer statements, that's the allegation. I take those
18 as good-faith allegations, which can be denied and disproved
19 and which are subject to proof beyond a reasonable doubt at a
20 trial. But for the purposes of this jurisdictional issue,
21 those are the grounds of the indictment.

22 The statement in the notice of removal by the
23 defendant states an alternative means of payment of this
24 retainer calling it a retainer agreement, calling it the
25 services rendered and the like, which, in effect, is the

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1 disputed issue of the trial. There's no evidence to base any
2 of this on. There's no evidence that Cohen did anything under
3 his retainer, there's no evidence that he in fact was paid for
4 services rendered from checking accounts, except in the form of
5 the hush payment to Ms. Clifford. But even taking the facts
6 stated in this averment by the defendant in the notice to
7 remove, there nevertheless is no relationship to any official
8 act of the president. Cohen was hired as a private matter. He
9 was hired as a private matter by a public official, but he was
10 hired as a private matter to take care of private matters. It
11 is said that the president hired Cohen to make sure that his
12 private affairs were not mixed with his public affairs. That
13 very definition suggests that Cohen was hired privately, not
14 under color of any presidential office or relating to it. The
15 fact that it was the president who made that private hiring
16 does not change the facts or the legal principles to be derived
17 from the facts.

18 With respect to the issue of the federal defense, I
19 find that there is no colorable defense. The indictment is for
20 falsification for purposes of fraud with an intention to commit
21 another crime. None of those things necessarily involve
22 anything covered by the federal elections law or the
23 regulations under the federal regulations law.

24 The defendant also has not raised colorable federal
25 defenses within his notice of removal. Defendant's asserted

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1 immunity defense suffers the same defect as his arguments on
2 color of office. Even accepting defendant's version of the
3 facts as true, he has not drawn a plausible connection between
4 Cohen's services and the discharge of his official duties as
5 president.

6 And largely, the argument to protective law because of
7 an evil state purpose has not been -- very much by the defense.
8 I'm not so sure to what extent they rely on it, but there's no
9 reason to believe that an equal measure of justice could not be
10 rendered by the state court as in the federal court.

11 These are my present attitudes as to my rulings, but
12 the rulings themselves will be made in the course of my
13 opinion. The opinion will be the findings, and what I say now
14 is intended as a preview of that, but not necessarily binding
15 on what I will do.

16 Thank you all for your attention. Thank you for the
17 high quality legal work.

18 (Adjourned)

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